

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK**



PRO SE HANDBOOK

**1999 - 2000
Supplement**

Effective January 1, 1999, the Local Rules of Practice of the Northern District of New York were amended and restated and certain General Orders previously issued by the Northern District were abrogated. In light of these changes, the following supplement to the Pro Se Handbook has been prepared for use throughout 1999. Unless otherwise stated in this supplement, the information contained in the most recent Pro Se Handbook (dated 1997-98) is current and may be used by you.

For your assistance, L.R. 5.4(b) and L.R. 7.1 have been reprinted in full at the end of this Supplement.

**Page reference in 1997-98
Pro Se Handbook**

Revisions

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General Order No. 49 was abrogated. The substance of this General Order is now contained in L.R. 5.4(b) (full text below), p. 5.

Chapter 1

p. 2

The Internet address for the Court's web page is www.nynd.uscourts.gov.

Chapter 2

No changes.

Chapter 3

p. 1

Funding for Prisoners' Legal Services was not continued in the 1998-99 New York State budget. Therefore, you should not contact this agency in attempting to obtain counsel.

p. 6

Do not contact Prisoner's Legal Services for representation; see above.

Chapter 4

No changes.

Chapter 5

p. 3

General Order No. 49 was abrogated effective 1/1/99. The substance of this General Order is now contained in L.R. 5.4(b); full text below, p. 5).

p. 6

General Order No. 49 was abrogated effective 1/1/99. See above.

p. 8

Local Rule 26.2 eliminates the requirement that all discovery be filed with the Court in inmate-filed actions. A discovery motion pursuant to Fed.R.Civ.P. 37 must be accompanied by the discovery materials to which it relates. Discovery material to be used in support of a motion or at trial must be filed with the Court prior to the motion or trial. See L.R. 26.2.

pp. 9-10

General Order No. 49 was abrogated effective 1/1/99. The substance of this General Order is now contained in L.R. 5.4(b) (full text below, p. 5).

Chapter 6

No changes.

Chapter 7

No changes.

Chapter 8

p. 1

In light of the significant revisions to L.R. 7.1, please refer to the full text of that Rule which is set forth below at pp. 7-14.

p. 2

Delete reference to L.R. 7.1(c)(1). See L.R. 7.1(a)(2) for affidavit filing requirements.

Chapter 8, cont.

p. 2

Delete reference to L.R. 7.1(c)(2). See L.R. 7.1(a)(1) for memorandum of law filing requirements.

pp. 2-3

Delete heading “Statement of Material Facts.” Refer to revised section (4), below, p. 6, entitled “Special requirements: Motions for Summary Judgment Pursuant to Federal Rule of Civil Procedure 56.”

pp. 4-10

Reference should no longer be made to L.R. 7.1 as it appears in the 1997-98 Handbook. See full text of L.R. 7.1 below, pp. 7-14.

Chapter 9

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See L.R. 38.1 regarding requests for a jury trial.

5.4 Civil Actions Filed In Forma Pauperis; (Amended January 1, 1999)
Applications for Leave to Proceed In Forma Pauperis.

(a) On receipt of a complaint or petition and an application to proceed in forma pauperis, and supporting documentation as required for prisoner litigants, the clerk shall promptly file the complaint or petition without the payment of fees and assign the action in accordance with L.R. 40.1. The complaint, application, and supporting documentation then shall be forwarded to the assigned magistrate judge for a determination of whether the applicant will be granted leave to proceed in forma pauperis and whether the complaint or petition shall be served by the marshal. Prior to service of process by the marshal pursuant to 28 U.S.C. § 1915(d) and L.R. 5.1(h), the Court shall review all actions filed pursuant to 28 U.S.C. § 1915 to determine whether sua sponte dismissal is appropriate. The granting of an in forma pauperis application shall in no way relieve the party of the obligation to pay all other fees for which such party is responsible regarding such action, including, but not limited to, copying and/or witness fees.

(b) Whenever a fee is due for a civil action subject to the Prison Litigation Reform Act (PLRA), the prisoner must comply with the following procedure:

1. (A) Submit a signed, fully completed and properly certified in forma pauperis application; and
(B) Submit the authorization form issued by the clerk's office.
2. (A) (i) If the prisoner has not fully complied with the requirements set forth in paragraph 1 above, and the action is not subject to *sua sponte* dismissal, a judicial officer shall, by Court order, inform the prisoner as to what must be submitted in order to proceed with such action in this District ("Order").
(ii) The Order shall afford the prisoner thirty (30) days in which to comply with the terms of same. If the prisoner has failed to fully comply with the terms of such Order within such period of time, the action shall be dismissed.
(B) If the prisoner has fully complied with the requirements set forth in paragraph 1 above, and the action is not subject to *sua sponte* dismissal, the judicial officer shall review the in forma pauperis application. The granting of the application shall in no way relieve the prisoner of the obligation to pay the full amount of the filing fee.
3. After being notified of the filing of the civil action, the agency having custody of the inmate shall comply with the provisions of 28 U.S.C. § 1915(b) regarding the filing fee due concerning the action.

(4) Special requirements: Motions for Summary Judgment Pursuant to Federal Rule of Civil Procedure 56.

Under the Federal Rules of Civil Procedure, a party may move for summary judgment on a claim, counterclaim, or cross-claim when that party believes there is no genuine issue of material fact requiring trial and that party is entitled to prevail as a matter of law. The motion may be directed toward all or part of a claim or defense and it may be made on the basis of the pleadings or other portions of the record in the case or it may be supported by affidavits and other materials outside the pleadings. See Fed. R. Civ. P. 56; Black's Law Dict., 5th ed., at 1287.

Rule 56(e) states that:

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

Thus, when a party seeking summary judgment (the "moving party") files a supporting affidavit, the party opposing summary judgment must respond by filing an affidavit, deposition, answer to interrogatories, or other documentary evidence in the form prescribed

by Local Rule 7.1 (attached hereto at p. 7). These submissions should contradict the moving party's submissions so as to demonstrate that there are factual issues requiring a trial. See Fed. R. Civ. P. 56(e). Facts asserted in the affidavit(s) of the moving party will be taken as true if not controverted by counter-affidavits or other documentary evidence. Similarly, under the local rules of the Northern District, a party seeking summary judgment must file a Statement of Material Facts setting forth each material fact the moving party contends there exists no genuine issue. The opposing party is required to file a response to the Statement of Material Facts admitting and/or denying each of the movant's assertions and may also include additional facts the non-movant contends are in dispute. Any facts set forth in the moving party's Statement of Material Facts that are not controverted in the response are deemed admitted. See N.D.N.Y.L.R. 7.1(c)(3).

Failure to respond to a motion for summary judgment will result in the granting of that motion. See N.D.N.Y.L.R. 7.1(b)(3). For further reference, see Fed. R. Civ. P. 56; Local Rule 7.1.

C. Local Rule 7.1 Motion Practice. (Amended January 1, 1999)

Introduction - Motion Dates and Times.

Motions are returnable at a regularly scheduled motion date and time of the assigned judge, unless the Court directs otherwise. The moving party should select a return date accordingly, as set forth in subdivision (b). If the return date selected is not on a regularly scheduled motion date, or if no return date is selected, the clerk will set a proper return date and notify the parties.

Information regarding motion dates and times is specified on the case assignment form

provided to the parties at the commencement of the litigation or may be obtained by calling the clerk's office.

(a) Papers Required.

Except as otherwise provided in this paragraph, all motions and opposition to motions require a memorandum of law, supporting affidavit, and proof of service on all the parties, see L.R. 5.1(a). Additional requirements for specific types of motions, including cross motions, see L.R. 7.1(c), are set forth within this Rule.

1. Memorandum of Law.

No party shall file or serve a memorandum of law that exceeds twenty-five (25) pages in length, unless leave of the judge hearing the motion is obtained prior to filing. All memoranda of law shall contain a table of contents and, wherever possible, parallel citations. Memoranda of law that contain citations to decisions exclusively reported on computerized databases (e.g., Westlaw, Lexis, Juris, etc.) shall be accompanied by copies of the decisions.

When making a motion based upon a Rule or statute, the moving papers must specify the Rule or statute upon which the motion is predicated.

A memorandum of law is required for all motions except the following:

- (A) a motion pursuant to Fed. R. Civ. P. 15 to amend or supplement a pleading;
- (B) a motion pursuant to Fed. R. Civ. P. 12(e) for a more definite statement;
- (C) a motion pursuant to Fed. R. Civ. P. 17 to appoint next friend or guardian ad litem;
- (D) a motion pursuant to Fed. R. Civ. P. 25 for substitution of parties; and
- (E) a motion pursuant to Fed. R. Civ. P. 37 to compel discovery.

2. Affidavit.

An affidavit must not contain legal arguments, but must contain factual and procedural background as appropriate for the motion being made.

An affidavit is required for all motions except the following:

- (A) a motion pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted;
- (B) a motion pursuant to Fed. R. Civ. P. 12(c) for judgment on the pleadings; and

- (C) a motion pursuant to Fed. R. Civ. P. 12(f) to strike a portion of a pleading.

3. Summary Judgment Motions.

Any motion for summary judgment shall contain a Statement of Material Facts. The Statement of Material Facts shall set forth, in numbered paragraphs, each material fact the moving party contends there exists no genuine issue. Each fact listed shall set forth a specific citation to the record where the fact is established. The record for purposes of the Statement of Material Facts includes the pleadings, depositions, answers to interrogatories, admissions and affidavits. It does not, however, include attorney's affidavits. Failure of the moving party to submit an accurate and complete Statement of Material Facts shall result in a denial of the motion.

The opposing party shall file a response to the Statement of Material Facts. The non-movant's response shall mirror the movant's Statement of Material Facts by admitting and/or denying each of the movant's assertions in matching numbered paragraphs. Each denial shall set forth a specific citation to the record where the factual issue arises. The non-movant's response may also set forth any additional material facts that the non-movant contends are in dispute. Any facts set forth in the Statement of Material Facts shall be deemed admitted unless specifically controverted by the opposing party.

4. Motions to Amend or Supplement Pleadings, or for Joinder or Interpleader.

An unsigned copy of the proposed amended pleading must be attached to a motion brought under Fed. R. Civ. P. 14, 15, 19-22. Except as provided by leave of Court, the proposed amended pleading must be a complete pleading which will supersede the original pleading in all respects. No portion of the prior pleading shall be incorporated into the proposed amended pleading by reference.

The motion must set forth specifically the proposed amendments and identify the amendments in the proposed pleading.

Where leave to supplement a pleading is sought under Fed. R. Civ. P. 15(d), the proposed supplemental pleading must be limited to acts that occurred subsequent to the filing of the original complaint. The paragraphs in the proposed pleading must be numbered consecutively to the paragraphs contained in the pleading that is to be supplemented.

Caveat: The granting of the motion does not constitute the filing of the pleading. After leave is given, the moving party must file and serve the original signed pleading.

(b) Motions.

1. Dispositive Motions.

[THE FULL TEXT OF L.R.7.1(b)(1) IS OMITTED. NOTE: PRO SE AND PRISONER CASES ARE EXEMPT FROM L.R. 7.1(b)(1).]

2. Non-Dispositive Motions and Motions Exempt from 7.1(b)(1).

All motion papers not prepared pursuant to Local Rule 7.1(b)(1) (that is, non-dispositive motions and those motions specifically exempted from 7.1(b)(1)) must be filed with the Court and served upon the other parties not less than TWENTY-EIGHT CALENDAR DAYS prior to the return date of the motion. The Notice of Motion should state the return date which has been selected by the moving party. See L.R. 7.1(a). Opposing papers must be filed with the Court and served upon the other parties not less than FOURTEEN CALENDAR DAYS prior to the return date of the motion. Reply papers may be filed only with leave of Court, upon a showing of necessity. If leave is granted, reply papers must be filed with the Court and served upon the other parties not less than SEVEN CALENDAR DAYS prior to the return date of the motion.

All original motion papers shall be filed in the clerk's office designated on the case assignment form provided to the parties at the commencement of the litigation.

The parties shall not file, or otherwise provide to the assigned judge, a courtesy copy of the motion papers unless specifically requested to do so by that judge.

3. Failure To Timely File or Comply.

Any papers required under this Rule that are not timely filed or are otherwise not in compliance with this Rule shall not be considered unless good cause is shown. Failure to file or serve any papers as required by this Rule shall

be deemed by the Court as consent to the granting or denial of the motion, as the case may be, unless good cause is shown.

Any party who does not intend to oppose a motion, or a movant who does not intend to pursue a motion, shall promptly notify the Court and the other parties of such intention. Notice should be provided at the earliest practicable date, but in any event no less than SEVEN CALENDAR DAYS prior to the scheduled return date of the motion, unless for good cause shown. Failure to comply with this Rule may result in the imposition of sanctions by the Court.

(c) Cross-Motions.

1. Motions under 7.1(b)(1).

A cross-motion may be served at the time opposition papers to the original motion are served, under the time provisions of 7.1(b)(1)(B). The original and one copy of the cross-motion/opposition papers must be served on the original moving party, and one copy must be served upon all other parties. If a cross-motion is made, the cross-motion brief must be joined with the opposition brief and may not exceed 25 pages in length, exclusive of exhibits. A separate brief in opposition to the original motion is not permissible.

The original moving party may reply in further support of the original motion and in opposition to the cross-motion with a reply/opposition brief that does not exceed 25 pages in length, exclusive of exhibits. The reply/opposition papers must be served on the opposing party within FOURTEEN CALENDAR DAYS from the date on which the opposition papers were served by the opposing party, unless the parties agree otherwise.

The cross-moving party may reply in further support of the cross-motion with a reply brief that does not exceed 10 pages in length, exclusive of exhibits, under the time provisions of 7.1(b)(1)(C). The original and one copy of the reply must be served upon the original moving party, and one copy must be served on all other parties.

Page lengths may not be exceeded except with prior permission of the judge hearing the motion.

2. Motions under 7.1(b)(2).

A party opposing a motion may also file and serve a cross-motion with its opposition papers. However, a dispositive motion which would be filed under

7.1(b)(1) must not be filed as a cross-motion to a motion filed under 7.1(b)(2). A cross-motion is returnable on the same date as the original motion. The original moving party must file and serve on the other parties a response to the cross-motion not less than SEVEN CALENDAR DAYS prior to the scheduled return date.

(d) Discovery Motions.

The following steps are required prior to making any discovery motion pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure.

- 1. Parties must make good faith efforts among themselves to resolve or reduce all differences relating to discovery prior to seeking Court intervention.**
- 2. The moving party must confer in detail with the opposing party concerning the discovery issues between them in a good faith effort to eliminate or reduce the area of controversy and to arrive at a mutually satisfactory resolution. Failure to do so may result in denial of a motion to compel discovery and/or imposition of sanctions.**
- 3. If the parties' conference does not fully resolve the discovery issues, the party seeking relief must then request a Court conference with the assigned magistrate judge. The assigned magistrate judge may direct the party making the request for a Court conference to file an affidavit setting forth the date(s) and mode(s) of the consultation(s) with the opposing attorney and a letter that concisely sets forth the nature of the dispute and a specific listing of each of the items of discovery sought or opposed. Immediately following each disputed item, the party must set forth the reason why the item should be allowed or disallowed.**
- 4. Following a request for a discovery conference, the Court may schedule a conference and advise all attorneys of a date and time. The discovery conference may be conducted by telephone conference call, initiated by the party making the request for the conference, by video conference, or by personal appearance, as directed by the assigned judge.**
- 5. Following a discovery conference, the Court may direct the prevailing party to submit a proposed order, on notice to the opposing party.**
- 6. If a party fails or refuses to confer in good faith with the requesting party, thus requiring the request for a discovery conference, at the**

discretion of the Court the resisting party will be subject to the sanction of the imposition of costs, including the attorney's fees of opposing counsel in accordance with Fed. R. Civ. P. 37.

7. A party claiming privilege with respect to a communication or other item must specifically identify the privilege and the grounds for the privilege claimed. No generalized claims of privilege may be made.
8. Motions to compel discovery may be filed no later than THIRTY CALENDAR DAYS after the discovery cut-off date. See L.R. 16.2.

(e) Order to Show Cause.

In addition to a memorandum of law and supporting affidavit, an Order to Show Cause must include an affidavit clearly and specifically showing good and sufficient cause why the standard Notice of Motion procedure cannot be used. Reasonable advance notice of the application for an Order to Show Cause must be given to the other parties.

An Order to Show Cause must contain a space for the assigned judge to set forth the: (a) deadline for supporting papers to be filed and served, (b) deadline for opposing papers to be filed and served, and (c) the date and time for the hearing.

(f) Temporary Restraining Order.

A temporary restraining order may be sought by Notice of Motion or Order to Show Cause, as appropriate. Filing procedures and requirements for supporting documents are the same as set forth in this Rule for other motions. Any application for a temporary restraining order must be served on all other parties unless otherwise permitted by Fed. R. Civ. P. 65.

(g) Motion for Reconsideration.

Motions for reconsideration or reargument, unless otherwise governed by Fed. R. Civ. P. 60, may be served not later than TEN CALENDAR DAYS after the entry of the challenged judgment, order, or decree. The papers supporting and opposing the motion must be filed pursuant to the time schedule set forth in Local Rule 7.1(b)(2). A memorandum of law concisely setting forth the basis for the motion is required. See L.R. 7.1(a). Motions for reconsideration or reargument will be decided on submission of the papers, without oral argument, unless the Court directs otherwise.

(h) Oral Argument.

On all motions made to a district Court judge, except motions for reconsideration, the parties shall appear for oral argument on the scheduled return date of the motion. In the

discretion of the district Court judge, or on consideration of a request of any party, a motion returnable before a district Court judge may be disposed of without oral argument. Thus, the parties should be prepared to have their motion papers serve as the sole method of argument on the motion.

On all motions made to a magistrate judge, the parties shall not appear for oral argument on the scheduled return date of the motion unless the Court sua sponte directs or grants the request of any party for oral argument.

(i) Sanctions for Vexatious or Frivolous Motions or Failure to Comply with this Rule.

A party who presents vexatious or frivolous motion papers, or fails to comply with this Rule is subject to discipline as the Court deems appropriate, including sanctions and the imposition of costs and attorney's fees to opposing counsel.

(j) Adjournments.

Adjournment of motions is in the discretion of the Court. Any party seeking an adjournment from the Court must first contact the opposing party. No motion under this Rule will be adjourned more than two times unless the party seeking the adjournment has satisfied the Court that a further adjournment is necessary. In no event shall an adjournment last longer than four months. The party requesting the adjournment is responsible for renoticing the motion. Any motion not renoticed within four months from the initial adjournment will be deemed withdrawn.

PRO SE HANDBOOK
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

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CHAPTER I

INTRODUCTION

Welcome to the United States District Court for the Northern District of New York.

We have prepared this handbook specifically for the person who is representing himself/herself as a party to a lawsuit: the pro se litigant. This handbook is a practical and informative means of providing assistance to such individuals who are litigating claims in a federal forum. **It is important that you read this entire manual before you ask the Clerk's Office specific questions about your potential lawsuit; many of your questions will undoubtedly be answered in the chapters of this handbook.**

The early chapters of this handbook provide information that you should consider before filing your own lawsuit. If, after considering this information, you decide to file a case in federal court, additional information has been provided to assist you in filing your case and utilizing the appropriate rules of procedure for the United States District Court for the Northern District of New York.

We have also provided you with an overview of the “ins and outs” of legal research, as well as a glossary of common and foreign words regularly used in the legal field. This handbook should not be considered the last word, nor should it be your only resource. Rather, this handbook should be considered simply as a procedural aid in helping you file and litigate your lawsuit.

If, after reading this manual, you still have questions about your case, you may contact the Clerk's Office. That office is willing to assist you with certain questions you may have regarding the Local Rules of Civil Procedure as well as the Federal Rules of Civil Procedure. Please do not hesitate to call on us regarding a procedural matter. However, **employees of the Court cannot give legal advice.**

For your convenience, the Clerk's office for the Northern District of New York has offices in the following locations:

Federal Building and
U.S. Courthouse
P.O. Box 7367
100 South Clinton Street
Syracuse, N.Y. 13261-7367
(315) 448-0507

James T. Foley
U.S. Courthouse
445 Broadway - Rm 222
Albany, N.Y. 12207-2924
(518) 431-0279

U.S. Courthouse and
Federal Building
15 Henry Street
Binghamton, N.Y. 13902
(607) 773-2893

Alexander Pirnie
Federal Building
10 Broad Street
Utica, N.Y. 13501
(315) 793-8151

Additionally, this manual, together with the Forms Index and glossary, is available on the Internet at the following address:

www.nynd.uscourts.gov

CHAPTER II

THE STRUCTURE OF THE COURTS

There are two court systems in the United States: the state court system and the federal court system. State courts typically hear civil, domestic (divorce and child custody), probate and property disputes, as well as criminal matters, in accordance with the laws of each state. Matters typically heard by the federal courts involve complaints that allege violations of the United States Constitution, federal laws (including civil rights laws), admiralty and maritime matters, United States patent, trademark and copyright matters and bankruptcy proceedings. These matters usually fall into one of two main categories: A. federal question cases -- cases which "arise under" the Constitution, laws or treaties of the United States and B. diversity cases -- disputes arising between parties who are citizens of different states where the amount in controversy exceeds a certain amount set by Congress, currently \$75,000.00.

As set forth in Chapter IV, before filing a case in a federal court, you should first try to ensure that the Court has **jurisdiction** over your potential lawsuit. Jurisdiction is the authority given to a Court to hear and decide certain cases.

The following is a list of the federal courts. These courts are given their authority by the U.S. Constitution directly or by acts of Congress enacted under constitutional authority.

o **United States Supreme Court:**

- The United States Supreme Court is given its authority by Article III of the U.S. Constitution. The Supreme Court reviews certain judgments of the U.S. Courts of Appeals and, in certain instances, state court decisions of the highest state court which involve a substantial federal question. The Supreme Court has original jurisdiction over matters involving treason and presidential impeachment.

o **United States Courts of Appeals:**

- The Courts of Appeals for the District of Columbia and for the First through the Eleventh Circuits hear appeals from the federal district courts, bankruptcy courts and tax courts. They also directly review some decisions of various federal administrative agencies.
- The United States Court of Appeals for the Federal Circuit hears appeals from final decisions of federal district courts for civil actions arising under any Act of Congress relating to patents, copyrights and trademarks, as well as final decisions of the district courts and the United States Claims Court where the United States is sued as a defendant. This Court also hears appeals from decisions of the United States Court of International Trade, the United States Patent and Trademark Office, the United States International Trade Commission relating to unfair import practices and decisions by the Secretary of Commerce relating to import tariffs, among others.

o **United States District Courts:**

- The United States District Courts have jurisdiction over both criminal and civil actions. They also directly review decisions of certain federal administrative agencies.
- There are four United States District Courts in New York: the Eastern, Southern, Western and Northern District Courts. Decisions from these Districts may be appealed to the United States Court of Appeals for the Second Circuit, which is located in New York City.
- A list of the counties located within the Northern District of New York appears at the conclusion of this chapter. The acts alleged in your complaint should have occurred in one or more of these counties if you intend to file your lawsuit in the Northern District.

OTHER COURTS IN THE FEDERAL SYSTEM:

- o United States Claims Court hears certain kinds of actions against the United States Government, except those involving tort claims under the Federal Tort Claims Act. These cases may be appealed to the United States Court of Appeals for the Federal Circuit.
- o The Tax Court of the United States hears cases concerning the federal tax laws. Its decisions may be appealed to the appropriate United States Court of Appeals.
- o United States Bankruptcy Courts hear all matters pertaining to bankruptcy and financial reorganization. Their decisions may be appealed to the United States District Court and, in some cases, to the appropriate United States Court of Appeals.
- o The United States Court of Military Appeals hears appeals from court martial decisions.
- o The United States Court of International Trade hears cases concerning the federal tariff laws. Its decisions may be appealed to the United States Court of Appeals for the Federal Circuit.

As we stated above, the federal district courts have both civil and criminal jurisdiction. They have original jurisdiction in a number of different actions, including:

- o Civil actions arising under the Constitution, laws or treaties of the United States ("federal question" cases).
- o Actions where the matter in controversy exceeds the sum or value of a certain amount set by Congress, currently \$75,000, exclusive of interest and costs, and is between citizens of different states; citizens of a state and foreign states or citizens or subjects thereof or citizens of different states in which foreign states or citizens or subjects thereof are additional parties ("diversity" cases).
- o All criminal offenses against the laws of the United States.
- o Admiralty, maritime and "prize" cases.
- o Bankruptcy matters and proceedings.

- o All civil actions, suits, or proceedings commenced by the United States or by any agency or officer thereof.
- o Actions involving injuries protected by specific federal laws (e.g., the Federal Employers Liability Act).

Finally, it is important to realize that just because you may properly file an action in a federal court, you generally should not file an action in the federal court for the Northern District of New York unless the actions (or inactions) that you believe violated your rights occurred within the boundaries of the Northern District. This is called “venue.” (Refer to the Glossary for the definition of venue). For your reference, we have listed the counties that are located within the Northern District to assist you in determining whether you should file your lawsuit in this District or another District Court.

COUNTIES WITHIN THE NORTHERN DISTRICT OF NEW YORK

Albany	Essex	Madison	Saratoga
Broome	Franklin	Montgomery	Schenectady
Cayuga	Fulton	Oneida	Schoharie
Chenango	Greene	Onondaga	Tioga
Clinton	Hamilton	Oswego	Tompkins
Columbia	Herkimer	Otsego	Ulster
Cortland	Jefferson	Rensselaer	Warren
Delaware	Lewis	St. Lawrence	Washington

CHAPTER III

REPRESENTATION BY AN ATTORNEY

This handbook was developed to address the needs of the litigant who is filing a lawsuit without the aid of an attorney. However, there may be alternatives to representing yourself if you are indigent.

A. OBTAINING AN ATTORNEY PRO BONO.

In a **criminal** case, a defendant is **entitled** to legal counsel by the United States Constitution and one can be provided if indigence is shown on the part of the criminal defendant. However, in a **civil** case, a party is **not entitled** to an attorney. There are attorneys and organizations, such as legal aid societies, that may be willing to represent you "pro bono," that is, free of charge. You should contact these offices in an effort to secure representation on your own **before** you request that the Court appoint counsel on your behalf. As discussed more fully below, you must be able to prove to the Court that you could not obtain counsel on your own before the Court can consider appointing an attorney to represent you.

For **federal** inmates, a list of public interest firms that you should contact in an effort to secure representation on your own appears on page 5. For **state** inmates, there are several offices of Prisoners' Legal Services throughout the state. A list of the Prisoners' Legal Services is provided at the conclusion of this chapter on page 6.

B. APPOINTMENT OF COUNSEL BY THE COURT.

A pro se litigant that the Court has found to be indigent (typically by the granting of an in forma pauperis application) may request, by way of written motion, that the Court appoint counsel on such party's behalf if that person is unable to otherwise obtain counsel. You should be aware, however, that there are many more litigants seeking the appointment of counsel than there are attorneys willing to volunteer their services. Furthermore, there is no automatic entitlement to legal representation in a civil action, even though you may truly believe that you need an attorney in order to effectively present your case to the Court.

The Court considers requests for counsel in light of a number of factors set forth by the Second Circuit. First, the Court must determine whether the party's position is of substance. If so, the Court will then consider the following factors:

The indigent's ability to investigate the crucial facts, whether conflicting evidence implicating the need for cross-examination will be the major proof presented to the fact finder, the indigent's ability to present the case, the complexity of the legal issues and any special reason in that case why appointment of counsel would be more likely to lead to a just determination.

Terminate Control Corp. v. Horowitz, 28 F.3d 1335, 1341 (2d Cir. 1994) (quoting *Hodge v. Police Officers*, 802 F.2d 58, 61 (2d Cir. 1986)).

Any motion for the appointment of counsel must include a document detailing the party's efforts to obtain counsel by means other than court appointment. In making such a motion, you must include letters received from attorneys that you contacted regarding

your case. **Failure to include documentation which substantiates your attempts to obtain counsel on your own will result in the denial of your motion for appointment of counsel.**

You should also know that the judicial officers of the Northern District of New York may appoint an attorney from the District's pro bono panel in any number of different capacities. An attorney may be appointed for the limited purpose of preparing a confidential report analyzing the merits of the claim(s) raised by the plaintiff; as standby trial counsel to assist the pro se plaintiff at the trial of the lawsuit; as support counsel to assist another attorney; as trial counsel to conduct the trial of an action or as the party's attorney for both pre-trial matters as well as the actual trial of the lawsuit. The capacity in which an attorney is appointed for a party is entirely within the discretion of the Court.

A sample motion for appointment of counsel is located in the Forms Index of this handbook.

C. SANCTIONS AND HOW THEY APPLY TO THE PRO SE LITIGANT.

Pro se litigants are subject to the same sanctions as licensed attorneys. When a party to a lawsuit presents a document to the Court, that party is verifying the accuracy and reasonableness of that document. If such a submission is false, improper or frivolous, the party may be liable for monetary or other sanctions.

Fed.R.Civ.P. 11 provides in pertinent part, as follows:

(b) Representations to Court. By presenting to the court ... a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances, -- (1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; (2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; (3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may ... impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(2) Nature of Sanction; Limitations. A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct by others similarly situated.... [T]he sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or ... an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

Thus, pursuant to Fed.R.Civ.P. 11, sanctions imposed by a Court could consist of, among other things, a monetary penalty or an award of the prevailing party's attorney fees, which could be a substantial sum. The Court may also prevent or “enjoin” a party from filing any future lawsuits until such time as the sanctions imposed have been paid. Sanctions can also be imposed on individuals who are incarcerated. See *Young v. Corbin*, No. 87-CV-433, slip op. at 8 (N.D.N.Y. June 23, 1995) (McAvoy, C.J.) (upholding sanctions against inmate who filed pro se lawsuit).

D. PUBLIC INTEREST FIRMS TO CONTACT IN ORDER TO OBTAIN PRO BONO COUNSEL

- (1) Federal inmates should contact the following public interest firms regarding possible pro bono representation:

(a) Community Law Offices
230 East 106th Street
New York, NY 10029

(b) Prison Task Force
National Lawyers Guild -- Buffalo Chapter
O'Brien Hall
SUNY Buffalo Law School
Amherst, NY 14260

(c) American Civil Liberties Union
132 West 43rd Street
New York, NY 10036

- (2) **State** inmates should contact the following offices regarding possible pro bono representation:

OFFICES OF PRISONERS' LEGAL SERVICES
FOR THE STATE OF NEW YORK

- (1) 301 South Allen Street
Albany, NY 12208
(518) 438-8046
Great Meadow & Coxsackie Correctional Facilities
-

- (2) 210 Franklin Street, Suite 500
Buffalo, NY 14202
(716) 854-5161
Attica Correctional Facility
-

- (3) 205 South Street, #200
Poughkeepsie, NY 12601
(914) 473-3810
Green Haven Correctional Facility
-

- (4) 118 Prospect Street, Suite 307
Ithaca, NY 14850
(607) 273-2283
Auburn & Elmira Correctional Facilities
-

- (5) 22 Broad Street
P.O. Box 1215
Plattsburgh, NY 12901
(518) 563-7300
Clinton Correctional Facility
-

You may also try to obtain representation from this office:

- (6) 105 Chambers Street
2nd Floor
New York, NY 10007
(212) 513-7373

CHAPTER IV

THE SEVEN STEPS TO CONSIDER BEFORE FILING A LAWSUIT

There are seven important steps that we believe you should consider before you file a case in federal court. While useful, this list is not to be considered the final word, as you may need to consider other factors not specifically listed here. You must also understand that even if you have reviewed all seven of these steps, and you believe that you should prevail in your lawsuit, there is always a possibility that ultimately you may not prevail.

Inmates that seek permission to proceed in forma pauperis should take special care when considering these steps, because even if your case is dismissed, you are, by law, required to pay, over time, the entire filing fee relating to your lawsuit, which for civil rights actions is currently \$150.00.

THE SEVEN STEPS TO CONSIDER BEFORE FILING A LAWSUIT:

- A. Real Injury or Wrong.
- B. Jurisdiction.
- C. Statute of Limitations.
- D. People You Intend to Sue.
- E. Immunity.
- F. Facts and Evidence.
- G. Necessity of Exhausting Available Remedies.

A. REAL INJURY OR WRONG.

Cases brought by persons without counsel typically fall into two categories: civil rights violations and tort claims.

A **civil rights** case involves a claim seeking redress for the violation of a person's civil or constitutional rights. This type of claim is often brought under the federal statute, 42 U.S.C. § 1983. This statute allows a person to sue individuals who, acting under color of state law, violate the constitutional rights of the plaintiff. Individuals that are suing federal defendants do not bring their lawsuit pursuant to this statute, however, because federal officials are not “state” actors. Instead, a claim against federal defendants is called a “*Bivens*” action, which derives its name from the case of *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

Form complaints that can be used to bring claims under 42 U.S.C. § 1983 and pursuant to the *Bivens* case are in the Forms Index of this Handbook.

A **tort** is defined as a “private or civil wrong or injury.” It is distinguished from criminal law because it is an injury against an individual as opposed to the state. If a person ran a stoplight and hit your car, the state would ticket the driver for running the stoplight but it would not be able to sue the driver for the damages you sustained in the accident. That is considered a private wrong or injury and it is the option of the victim to file a **civil** suit against the driver seeking damages for the injuries sustained. You cannot sue someone just because you are angry at them; you have to have been injured in some way.

B. JURISDICTION.

Jurisdiction is the authority of a Court to hear and decide certain cases. For a Court to render an enforceable judgment, it must have jurisdiction over both the “subject matter” of the controversy and the persons or entities involved. The court system in general is described more fully in Chapter II of this handbook. For a federal court to have jurisdiction over the subject matter of a lawsuit, at least one of two important criteria must generally be established:

- (1) The case must involve a "federal question" of law; or
- (2) The parties to the case must be residents of different states (known as diversity of citizenship) and the monetary amount in controversy must exceed a certain amount set by Congress, currently \$75,000.00.

Federal courts enforce "federal law," that is, the United States Constitution and federal statutes enacted by Congress; state courts enforce state laws. Sometimes the jurisdiction of courts overlaps, such as in diversity cases.

C. STATUTE OF LIMITATIONS.

A **statute of limitations** imposes a time limit within which a suit can properly be filed in Court. Some examples are as follows:

- | | | |
|-----|--|---------|
| (1) | Civil rights claims brought
under 42 U.S.C. § 1983: | 3 years |
| (2) | Car accident or other personal injury: | 3 years |
| (3) | Contract dispute: | 6 years |

Whether your claim is barred by the applicable statute of limitations is a legal question which may require legal research on your part. You should ascertain whether your action is barred by the applicable statute of limitations before filing a lawsuit.

D. PEOPLE YOU INTEND TO SUE.

When preparing a complaint, you must include facts (including dates) which support your claim that you are entitled to the relief you seek against **each** person or entity you are suing. You may not list six defendants in the caption of your complaint, but only discuss one or two of them in the main part, or "body," of your complaint. Rather, if you name people in the caption of your complaint, you must include in the body of this document specific allegations of wrongful conduct against each and every person that you have named. Moreover, you should list individuals by their name whenever possible, and avoid suing groups of people such as "the personnel department" or "the medical staff."

Additionally, you must be able to ascertain the identity of any "John Doe" or "Jane Doe" defendants you have listed in your complaint. The U.S. Marshals Service cannot serve "Jane Doe" of the XYZ Corporation, nor can it serve "John Doe at the Southland Correctional Facility." If the U.S. Marshals Service cannot serve a party, you will not be able to prevail in your lawsuit against such an individual. Of course, it is your responsibility, and not the duty of the Court, to ascertain the identities and addresses of those individuals whom you believe caused you to be injured.

E. IMMUNITY.

Immunity protects a person who is performing his/her duties as prescribed by law by affording such a person a defense to a lawsuit. For example, when a judge decides a case, he or she is immune from suit when performing the duties directed by law. However, if a judge has operated a car illegally and caused you to be harmed, you can sue the judge for the damages you sustained because driving a car does not fall under the duties of being a judge.

Most government employees are immune from suit if they are performing their assigned duties and are not aware that their conduct is in violation of the law.

You should realize that immunity may be a defense that prevents a person who is sued from being liable to you for damages. There may be other legal defenses that a person can assert which will also protect them from liability.

F. FACTS AND EVIDENCE.

You cannot sue someone just because you believe or you have a feeling that a person has violated your rights. You must have facts to support your claims. Relevant facts could include the time and place of the incident, witnesses who observed the behavior and actual articles of evidence (such as a memorandum, weapon, police report, medical records or other proof).

The burden of proof is on the plaintiff to win the case; without factual evidence, the case cannot be won.

G. NECESSITY OF EXHAUSTING AVAILABLE REMEDIES.

You should be aware that, in some instances, it is necessary for you to pursue certain remedies that may be available to you **before** you can properly pursue a claim in federal court. There are two areas in particular where this is likely to arise: (1) if you are appealing a federal agency's decision or (2) if you are seeking a writ of habeas corpus in federal court.

(1) Administrative Grievance Procedures.

People frequently want to appeal the decision of some governmental agency that affects them. An example of this is in the area of social security benefits.

If you want to appeal the denial of some benefit that is provided through an agency of the United States government or the state of New York, (for example, the denial of an application for social security benefits,) you must pursue **all** of the administrative procedures established by the agency for appealing its rulings **before** you file a lawsuit. **After** you have exhausted your administrative remedies, a sample form you may wish to use in order to appeal a decision of the Commissioner of Social Security is included in the Forms Index of this handbook.

(2) Petition for Writ of Habeas Corpus under 28 U.S.C. § 2254.

A person who is incarcerated or is otherwise "in custody" pursuant to a judgment of conviction rendered in a state court order may wish to challenge the **fact** or **duration** of this confinement. Such a challenge would be brought as a petition for writ of habeas corpus against the person who holds the inmate in custody, i.e., the prison's warden. If the person can successfully show that a constitutional right was violated which would have otherwise prevented the incarceration itself (the "fact of incarceration") or the duration of the incarceration, the Court will grant a writ of habeas corpus.

However, before a petition under 28 U.S.C. § 2254 can be properly filed in the federal court, the petitioner must pursue and **exhaust** all available state law remedies. This means that if you want to challenge a conviction or a sentence, you must pursue your rights of appeal under New York law. Only **after** you have fully pursued the available state law remedies will you be eligible to properly pursue a federal petition for a writ of habeas corpus. (This exhaustion requirement for habeas petitions does **not** apply to federal inmates filing habeas actions pursuant to 28 U.S.C. §§ 2241 or 2255).

You should also realize that there are time limits that now apply to petitions seeking a writ of habeas corpus. Section 101 of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") (Pub. L. No. 104-132, 110 Stat. 1212 (1996)) amended 28 U.S.C. § 2244 to require that habeas petitions brought under 28 U.S.C. § 2254 be filed no later than one year after the completion of state court direct review, with certain, limited, exceptions. The time during which a properly filed state court application for collateral review is pending is excluded from the one-year period. AEDPA, § 101 (codified at 28 U.S.C. §

2244(d)(2)). See *Reyes v. Keane*, 90 F.3d 676, 678 (2nd Cir. 1996). Therefore, if you are contemplating filing a habeas petition, you should be sure to file your action in a timely fashion.

In conclusion, it is important that you consider all of these steps before you file a case. After all of these factors have been considered, you must still follow the procedures set out for the particular Court with which you will file your case. Many of the specific procedural rules for the Northern District of New York are set forth in the Local Rules. In Chapter V of this handbook, we will discuss the rules and procedures for filing lawsuits in the United States District Court for the Northern District of New York. If your case needs to be filed in any other court, you should contact the Clerk's office of that court for information regarding local rules and procedures for filing your case.

CHAPTER V

**RULES AND PROCEDURES FOR FILING A CASE
IN THE NORTHERN DISTRICT OF NEW YORK**

A. FEDERAL AND LOCAL RULES OF CIVIL PROCEDURE.

If you are a party to a lawsuit, you are subject to the specific rules of procedure for the Court in which your case is filed. Federal courts are governed by the Federal Rules of Civil Procedure ("Fed. R. Civ. P.") as well as other rules of procedure regarding specific areas such as evidence, appeals, etc.

In the United States District Court for the Northern District of New York, all procedures are governed not only by the Federal Rules of Civil Procedure but also by the Local Rules of Civil Procedure and the District's General Orders. The numbering system of the Northern District's Local Rules coincides with the numbering system of the Federal Rules for easy reference. Copies of the Federal and Local Rules of Civil Procedure can be found at County Court House libraries, law schools and at correctional institutions throughout the state.

You can obtain a personal copy of the Northern District's Local Rules, or of this handbook, if you come, in person, to any of the offices listed in Chapter I of this handbook.

The Clerk's office can only send you a copy of the Northern District's Local Rules if you send a self-addressed, postage paid envelope, with a postal value of \$3.00, to the Clerk of Court.

You may obtain your own copy of this handbook by mail if you send a self-addressed, postage paid envelope, with a postal value of \$3.00, to the Clerk. Both of these publications can be sent to you if you send a self-addressed, postage paid envelope, with a postal value of \$5.00, to the Clerk of Court. **Due to the cost of printing, you will be limited to one (1) copy of the above publications per calendar year. Even if your copy is lost through no fault of your own, you must wait until the next year to obtain another copy of these publications.**

The Clerk's Office cannot send out copies of the above materials unless a self-addressed envelope (with prepaid postage as noted above) is sent, in advance, to the Clerk. This rule applies to everyone, even if you are proceeding in forma pauperis.

It is important to remember that, as a pro se litigant, **you are responsible for becoming familiar with and following the Court's Local Rules and procedures.**

B. FILING FEES.

Most civil actions must be accompanied by the filing fee set forth in 28 U.S.C. § 1914(a), which is currently one hundred and fifty dollars (\$150.00). Except as discussed below (relative to complaints filed by inmates), this fee must be paid in full at the time the complaint is presented to the Court for filing.

The procedure for filing a complaint differs depending upon whether the individual commencing the action is an inmate.

(1) Procedure to be followed by non-inmates.

If you are not incarcerated at the time you commence your action, and you cannot afford to pay the full filing fee of \$150.00, you must follow the following procedure:

(a) completely fill out an in forma pauperis application and sign it; and

(b) submit to the Court, at the time you file the action, an original complaint and a copy of your complaint for each of the defendants named in your lawsuit; and

(c) provide the Clerk with a completed civil cover sheet, summons and sufficient copies of completed USM- 285 forms for service on each and every defendant named in your complaint.

(2) Procedure to be followed by inmates.

On April 26, 1996, 28 U.S.C. § 1915 was amended in such a manner so as to require inmates to pay, over time, the \$150.00 statutory fee **even if the inmate is found to be indigent.** These amendments are part of the Prison Litigation Reform Act ("PLRA"). In order to implement the PLRA in the Northern District, the Judges of this District have enacted General Order No. 49 (as amended on January 11, 1997) ("General Order No. 49"). The full text of this General Order may be found at the end of this chapter.

If you are incarcerated at the time you commence your action, and you cannot afford to prepay the full filing fee of \$150.00, you must follow the following procedure:

(a) completely fill out an in forma pauperis application, sign it and have it certified by an authorized officer at your current place of incarceration; and

(b) sign the authorization form issued by the Clerk's Office of the Northern District in light of the PLRA; and

(c) submit to the Court, at the time you file the action, an original complaint and a copy of your complaint for each of the defendants named in your lawsuit; and

(d) provide the Clerk with a completed civil cover sheet, summons and sufficient copies of completed USM- 285 forms for service on each and every defendant named in your complaint.

Notice to all litigants:

If you do not file an application to proceed in forma pauperis, or the Court denies your in forma pauperis application, you must pay the full statutory filing fee at the time your complaint is filed and effect service on the defendants in accordance with Fed.R.Civ.P. 4. You must also file proof of service of your complaint on the defendants with the Court.

C. COPIES OF DOCUMENTS.

Pro se litigants proceeding in forma pauperis are **not** exempt from the requirement of providing identical copies of documents that must be served on the parties that they name to their lawsuit. It is important to realize that, even though you believe you cannot afford to pay for copies of documents, neither the Court nor the Clerk's Office can make copies for you free of charge. Therefore, you should be aware that, even if you are proceeding with an action in forma pauperis, **copies of documents in the file of your action (including the complaint and any other documents submitted by you or other parties to the action,) cannot be provided to you by the Clerk's office without a charge of \$0.50 per page, which must be paid in advance.**

You should always keep a copy of all documents that you send to the Court or the Clerk's Office for your own records. If you cannot afford to pay for copies, you must hand-write copies of these documents for service on the other parties to the action.

D. GUIDELINES ON FILING AND TIME CONSTRAINTS.

The following table may be used as a quick reference regarding items that must be completed/filed by a party, a brief description of the item, the Federal or Local Rule that relates to such item (if any) and when the item must be submitted to the Clerk.

ITEM	DESCRIPTION	RULE	WHEN TO SUBMIT
Civil Cover Sheet	The document that must accompany the complaint and summons before filing can occur. Form A (sample only).	LR 3.1	Initial filing.
Complaint	Sets out the parties, the controversy and the governing law, allegations, statements of facts, and demand for relief. Does not include legal argument. Forms E1 and E2.	FRCP 3,8 & 10	Initial filing.
In forma pauperis application	<p>Application made under penalty of perjury which seeks waiver of filing fee.</p> <p>For non-inmates, if granted, filing fee only (not other fees such as witness or copying fees) is waived.</p> <p>For inmates, if granted, filing fee need not be paid in full at one time, however it must be paid in accordance with 28 U.S.C. § 1915.</p> <p>Form F (two pages).</p>		Initial filing.
Authorization Form (Inmates Only)	Authorizes agency having custody of the inmate to calculate, encumber and/or disburse funds from inmate account in order to pay filing fee. Form G (sample only).	General Order No. 49 (1/11/97)	Initial filing.

ITEM	DESCRIPTION	RULE	WHEN TO SUBMIT
USM-285 Form	Directs the U.S. Marshals Service to serve the defendant listed on USM-285 form with Summons and Complaint. You must fill out one USM-285 form for each defendant. Form D (sample only).		Initial filing.
Summons	Issued by the Clerk; it is served on the defendant with a copy of the complaint. Form B (sample only). A "Waiver of Service of Summons" can also be served on the defendant along with a copy of the complaint. Forms C1 and C2 (sample only). The summons informs the defendant that unless a response is filed concerning the complaint, a judgment may be entered in favor of the plaintiff.	FRCP 4 LR 5.1(f) <i>et seq.</i>	Issued with the seal of the Clerk after in forma pauperis application is granted.
Motions	Items which seek an order from the Court on some particular matter during the pendency of a case. Motions must comply with the Local Rules & Federal Rules of Civil Procedure. A party who files a motion is called a "movant." Form H contains a sample motion for appointment of counsel.	LR 7.1	At least 28 days before the "return date" of the motion. Must be filed before deadline for the filing of motions expires.
Response to motions	Adversary's response to motion filed by the other party.	LR 7.1(b)	At least 14 days before the "return date" of the motion.

ITEM	DESCRIPTION	RULE	WHEN TO SUBMIT
Copies of Documents	When motions, stipulations or any other documents are sent to the Clerk or the Court, copies of any such documents must also be sent to all other parties to the action.	LR 5.1	When papers are sent to Court or the Clerk.
Discovery	<p>All discovery requests, and the adversary's responses thereto, must be served upon other counsel and parties.</p> <p>Except in inmate-filed actions, discovery shall NOT be filed with the Court unless by order of the Court or for use in a motion filed by a party.</p>	LR 26.2	<p>Discovery must be completed within Court-imposed deadlines.</p> <p>Except in inmate-filed actions, discovery is not filed with the Court.</p>
Proof of Service	Whenever a document is sent to the Court, there must be a "proof of service" document included, which states that a copy of that document was sent to the other party/parties (or their attorneys). Forms I1 and I2.	LR 5.1	Attached to the document sent to the Court or the Clerk.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

IN THE MATTER OF :
CIVIL ACTIONS BROUGHT : GENERAL ORDER # 49
PURSUANT TO : (SECOND AMENDMENT)
28 U.S.C. § 1915 :

To implement the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (Apr. 26, 1996) ("PLRA"), and pursuant to the authority delegated by the active judges of this Court, it is hereby

ORDERED, that the following procedure be followed in civil actions where a prisoner seeks in forma pauperis status pursuant to 28 U.S.C. § 1915¹:

1. A prisoner must submit the following along with the civil action:
 - (a) A signed, fully completed and properly certified in forma pauperis application and
 - (b) The authorization form issued by the Clerk's Office in light of the PLRA.
2. (a) (i) If the prisoner **has not** fully complied with the requirements set forth in paragraph 1 above, and the action is not subject to *sua sponte* dismissal, a judicial officer shall, by Court order, inform the prisoner as to what must be submitted in order to proceed with such action in this District ("Order").
 - (ii) The Order shall afford the prisoner **thirty (30) days** in which to comply with the terms of same. If the prisoner has failed to fully comply with the terms of such Order within such period of time, the action shall be dismissed.

¹ References to 28 U.S.C. § 1915 relate to this section as amended by the PLRA.

- (b) If the prisoner **has** fully complied with the requirements set forth in paragraph 1 above, and the action is not subject to *sua sponte* dismissal, the judicial officer shall review the in forma pauperis application. The granting of such application shall in no way relieve the prisoner of the obligation to pay the full amount of the filing fee. Moreover, the inmate shall be required to pay all other fees for which the prisoner is responsible in the future regarding such action, including, but not limited to, copying and/or witness fees.
- 3. After being notified of the filing of the civil action, the agency having custody of the inmate shall comply with the provisions of 28 U.S.C. § 1915(b) regarding the filing fee due concerning such action.
- 4. The terms of this General Order shall apply to all actions previously filed in this District that are subject to the PLRA. However, in no event shall the Clerk of Court refund to any inmate any partial payment received by the Clerk of Court toward the payment of the filing fee due in such action.

IT IS SO ORDERED.

Dated: January 11, 1997
Binghamton, New York

[Original order signed on this date]
Thomas J. McAvoy
Chief U.S. District Judge

CHAPTER VI

LEGAL RESEARCH -- AN OVERVIEW

It is not the purpose of this chapter to teach the pro se litigant all of the intricacies of legal research and writing, nor is it our goal to sort out the complexities of applying the law, whether it be statutory or case law, to the facts of a particular case. In fact, the law prohibits personnel employed by the Court, including its attorneys, from providing information regarding the application of the law to the facts of any case. Instead, we are providing information that is basic to a law library as a guideline for conducting your own research.

Just as there are certain standards of procedure for filing documents with the Clerk's office, there are certain standards for citing authority when applying the law to the facts of a certain case. The most common source people turn to in determining how to write correct citations is *A Uniform System of Citation*, (Sixteenth Edition), published and distributed by The Harvard Law Review Association, Cambridge, Massachusetts. It is more commonly referred to as "The Bluebook" and sometimes as the "The Harvard Citator." All of the information required for proper citation format can be found in this one text. This book is available in most law libraries.

Authority is the information used by a party to persuade a Court to find in favor of that party's side. Legal authority is divided into two classes -- primary and secondary.

A. PRIMARY AUTHORITY.

Primary authority is the most accepted form of authority cited and should be used before any other authority. There are two sources of primary authority: "statutory authority" and "case authority."

Statutory authority consists of Constitutions, codes, statutes and ordinances of either the United States, the individual states, counties or municipalities.

Case authority is comprised of court decisions, preferably from the same jurisdiction where the case is filed (in the Northern District, that includes the Second Circuit and District Court cases from the Northern District of New York). When a particular case is decided by a judge, it becomes "precedent," which means that it becomes an example or authority to be used at a later time for an identical or similar case, or where a similar question of law exists. Court decisions are the basis for the system of *stare decisis*. These decisions are published in what is called the National Reporter System which covers cases decided by the United States Supreme Court, the Courts of Appeals and the District Courts. **Digest systems** gather case decisions by subject matter on various points of law. There are many reporters in this system and they can be found in most law libraries. For example, there are digests that contain numerous cases dealing with the subject of civil rights which may be consulted by a person who has brought a civil rights action in federal court.

In conducting research, you should try to find cases that have already been decided (precedent) which support the position you are taking in your case.

B. SECONDARY AUTHORITY.

Secondary authority is found in legal encyclopedias, legal texts, treatises and law review articles. It should not be cited except where no primary authority is located by the party conducting the research. Secondary authority can also be used to obtain a broad view of the area of law and also as a tool for finding primary authority.

There are various types of secondary authority, including the following:

- (1) *Legal encyclopedias* contain detailed information about various topics.
- (2) *Treatises* are texts written about a certain topic of law by an expert in the field.
- (3) *Law review articles* are published by most accredited law schools and sometimes provide a broad overview of a particular subject matter.
- (4) The *Index to Legal Periodicals* provides reviews of books in the law, as well as comments regarding cases listed in the "Table of Cases."
- (5) *American Law Reports Annotated* (A.L.R.) is a collection of cases on more narrow issues of law. You should be aware that A.L.R. is constantly updated.
- (6) *Restatements* are publications compiled from statutes and decisions which discuss the law of a particular field.
- (7) *Shepard's Citations* is a large set of law books that provides a means by which any reported case (a cited decision) may be

checked to see when and how another court (the citing decision) has referred to or interpreted the first decision. **All cases must be checked to make sure another court has not reversed or overruled your cited decision.**

C. BASIC RULES FOR CONDUCTING LEGAL RESEARCH.

- (1) Give priority to cases from your own jurisdiction (i.e., Second Circuit, Northern District of New York).
- (2) Search for the most recent ruling on a subject matter.
- (3) Check to see if your book has a pocket part; if so, use it to obtain current authority for your lawsuit.
- (4) Be aware of "2d" and "3d" volumes. They distinguish one series from another. Cases that appear in "3d" volumes are more recent than those appearing in the "2d" series.
- (5) All legal citations are written with the volume number first, an abbreviation of the Reporter's name, and the page number, *e.g.*, 924 F.2d 345; 752 N.Y.S. 2d 967 or 144 A.L.R. 422.
- (6) Shepardizing your citations helps you avoid relying on overruled cases.

As stated earlier, the above information is not meant to be a complete or comprehensive guide to the law library or to legal research and writing, but is to be used merely as a guide to help you get started.

CHAPTER VII

SUBPOENAS

A. TYPES OF SUBPOENAS.

Subpoenas are notices issued by a Court, upon application by a party, commanding someone to do some act, such as appear at a specified time and place to give testimony regarding a certain matter. There are two basic types of subpoenas: **(1) a subpoena duces tecum**, which is a subpoena commanding a witness to bring relevant documents or things to be produced for inspection and/or copying and **(2) a subpoena ad testificandum**, which is a subpoena compelling a witness to appear at a judicial proceeding. Fed.R.Civ.P. 45 discusses subpoenas.

Subpoenas are also sometimes designated by the part of the case during which they are utilized. “Discovery subpoenas” are used during the discovery phase of the lawsuit, i.e., the period of time, after commencing the lawsuit and before trial, when the parties are gathering information and proof in accordance with Fed.R.Civ.P. 26 through 37. Similarly, “trial subpoenas” are used to obtain documents and witnesses for trial. You should not attempt to obtain a trial subpoena until after a judicial officer has informed you of a firm trial date for your lawsuit.

B. USE OF SUBPOENAS.

Subpoenas should not be used to obtain information from a **party** to a lawsuit. Rules 26 through 37 of the Fed.R.Civ.P. govern discovery of **parties** to an action and

should be used to gain access to information and documents without the use of a subpoena. Moreover, before resorting to the expense of a subpoena, you should first request the information sought from the non-party. By simply requesting the party's help first, you may avoid the effort and expense of obtaining a subpoena.

C. SERVICE AND EXPENSE OF SUBPOENAS.

You must ask the Clerk to issue a subpoena. A subpoena must be personally served on the person(s) asked to appear in person or to produce the requested documents. If a subpoena for the production of documents is issued, the custodian, i.e., the person in control of the requested documents, is usually not required to appear unless that person is subpoenaed as well. The party who issued the subpoena may be permitted to inspect and copy the documents produced at the time and place specified in the subpoena. However, you should be aware that **you will be required to pay any photocopying cost that was incurred by the party producing the requested documents.**

A person proceeding in forma pauperis can request that the U.S. Marshal serve a subpoena without being required to pay a fee for the actual service of the subpoena. However, a party requesting a subpoena **must** pay one day's witness fee (currently, forty (\$40.00) dollars a day) and mileage (currently, thirty (\$0.30) cents per mile for each mile between the home of the party served (the "witness") and the site of the proceeding). This

money must be provided to the U.S. Marshal in advance, who will in turn serve the subpoena on the person, together with these fees.

The fees discussed above cannot be waived even if you are proceeding with your lawsuit in forma pauperis.

A pro se litigant who is not proceeding in forma pauperis must pay the above-mentioned fees, as well as retain the services of a private process server, in order to properly serve a subpoena.

Finally, remember that a non-party cannot be required to travel more than 100 miles from their place of employment, business or residence in order to respond to a subpoena, even if it was properly served on them.

D. JURISDICTIONAL ISSUES.

You must determine the proper Court for obtaining a subpoena. A “discovery subpoena” must be requested from the district court of the district wherein the requested appearance of either the person or documents would occur. A “trial subpoena” must be requested from the Court that is conducting the trial.

E. OPPOSITION TO SUBPOENAS.

A motion to quash a subpoena is a motion made by the subpoenaed party to vacate or void the subpoena. For the restrictions on subpoenas and the reasons they may be quashed or modified, refer to Fed.R.Civ.P. 45(c)(3).

Pursuant to Fed.R.Civ.P. 45(c)(2)(B), a subpoena duces tecum is subject to **objections** as well as a motion to quash. Once served with a subpoena duces tecum, the custodian of the documents or things has fourteen (14) days to object to the information sought. If less than fourteen (14) days notice was given in the subpoena, these objections can be made at any time before the time specified for compliance in the subpoena.

Once a written objection has been made, there is no longer any obligation on the custodian to produce documents or things without an order to compel issued by the appropriate Court. The party seeking the subpoena must show a substantial need for the request, as well as an inability or hardship in getting the same information in another way.

Objections may be based on a number of reasons, including undue burden or hardship. Additionally, a party may object to a subpoena because of a legally recognized privilege, such as the attorney-client privilege. If the objection is based on privilege, the subpoenaed party must provide enough information in its objection to allow for the demanding party to contest the claim of privilege. See Fed.R.Civ.P. 45(d)(2).

CHAPTER VIII

MOTIONS

A motion is an application made to a judicial officer by a party that requests a ruling or order in favor of the party making the motion (the "movant"). Local Rule 7.1, included at the end of this chapter for your reference, sets forth the procedure for filing a motion in the Northern District; motions must be filed in conformity with Local Rule 7.1 or else they will be denied. Motions may be used to seek various types of relief during the pendency of an action, such as a motion to amend or a motion to compel discovery. However, motions should only be filed when necessary; multiple or frivolous motions can result in sanctions from the Court. See Chapter III Section C.

A. DOCUMENTS REQUIRED TO FILE A MOTION.

(1) Notice Of Motion.

The notice of motion is a concise document identifying (a) the type of motion; (b) the return date, i.e., the date on which the motion is to be heard by the Court; (c) the time the motion is to be heard and (d) the street address of the courthouse at which the motion is to be heard. In choosing a return date, remember that you must file your papers with the Court, and serve them on all parties, **at least twenty-eight (28) days before the return date that you select.** See L.R. 7.1(b).

(2) Affidavit.

An affidavit is a sworn declaration of the facts and procedural background pertinent to the motion, set forth in concise, paragraph form. Affidavits submitted in conjunction with a motion should contain **ONLY** the procedural history and the factual basis of the claim. Affidavits are not required, unless the Court otherwise directs, for motions filed pursuant to Fed.R.Civ.P. 12(b)(6), 12(c) or 12(f). See L.R. 7.1(c)(1)

(3) Memorandum of Law.

A memorandum of law is a document prepared by a party arguing a position on a legal matter regarding a case. It should contain a brief summary of the significant facts of the case, pertinent laws, including case law, and an argument as to how the law applies to the facts of the case. Your memorandum should also refer to specific sections of any affidavits or exhibits you have filed along with your motion. It may not exceed twenty-five (25) pages in length. (No memorandum is required, unless the Court otherwise directs, for motions made pursuant to Fed.R.Civ.P. 12(e), 15, 17, 25 or 37. See L.R. 7.1(c)(2)).

(4) Statement of Material Facts.

A statement of material facts is a separate, short and concise statement, in paragraph form, of the significant facts as to which the moving party contends there is no dispute. This statement must be filed with a motion for summary judgment brought pursuant to Fed.R.Civ.P. 56. See L.R. 7.1(f). In preparing such a statement, you should cite to your exhibits or other documents filed in the case whenever possible.

The party opposing a motion for summary judgment must include a separate, short and concise statement of the facts over which a dispute exists. **If the opposing party fails to contest any of the facts contained in the movant's statement of material facts, those facts are deemed admitted.** See Local Rule 7.1(f). (Reminder: this statement is required **only** for motions made pursuant to Fed.R.Civ.P. 56).

B. TIME CONSIDERATIONS.

(1) Moving Papers.

Local Rule 7.1 addresses the time frame in which motion papers must be filed. As noted above, the moving party must file the requisite papers with the Clerk's office and serve them on the other parties at least twenty-eight (28) days before the return date. (If the return date on the notice of motion is incorrect, the Clerk's office will set an appropriate date and notify the parties of same). Of course, parties must be sure to file all motions within the time limits previously established by the Court.

(2) Response Papers.

Parties responding to the motion must file their papers with the Clerk's office, and serve them on the other party, at least fourteen (14) days before the return date. (For response to cross-motions, see (4) below).

(3) Reply Papers.

Parties that wish to file papers in response to papers filed in opposition to a motion must obtain the permission of the Court to file "reply" papers, such permission will only be granted upon a showing of necessity. If Court permission is granted, reply papers must be filed with the Clerk and served on the opposing parties not less than seven (7) days before the return date of the motion.

(4) Cross-motions.

A cross-motion is a motion made by the "responding" party against the original movant. A cross-motion requests not only that the original motion be denied, but also that the Court rule in favor of the party filing the cross-motion (the "cross-movant") in some way. A cross-motion must be filed with the Clerk and served on all parties at least fourteen (14) days before the return date of the original motion. Any papers responding to the cross-motion must be filed with the Clerk and served on all parties at least seven (7) days prior to the original motion date.

C. LOCAL RULE 7.1 MOTION PRACTICE. (Amended January 1, 1997)

NOTE: Local Rule 7.1 now includes the requirements and procedures previously set forth in General Order 41, relating to certain pre-trial dispositive motions. All pre-trial dispositive motions, not specifically exempted in 7.1(n) of this rule, are now governed by Local Rule 7.1(b)(1).

(a) **Motion Dates and Times.**

Non-dispositive motions, discovery motions, *pro se* motions, and matters specifically exempted from compliance with Local Rule 7.1(b)(1) in 7.1(n) of this rule, shall be made returnable at a regularly scheduled motion date and time of the assigned judge. Information regarding motion dates and times is specified on the case assignment form provided to the parties at the commencement of the litigation or may be obtained by calling the Clerk's Office.

If a motion, not governed by Local Rule 7.1(b)(1), is filed and not made returnable on a regularly scheduled motion date, the clerk shall set a proper return date and shall notify the parties of the date on which the motion is made returnable.

All parties making pre-trial motions pursuant to Local Rule 7.1(b)(1) shall not select a return date for inclusion in the Notice of Motion until that motion has been fully briefed as described below, and is ready for filing with the court. The return date selected shall be the next regularly scheduled motion day for the assigned judge that is at least **TWENTY-ONE CALENDAR DAYS** after the date of filing, unless the parties agree to a later return date.

- (b) 1. (Omitted)
- 2. All Other Motions.

All motion papers not prepared pursuant to Local Rule 7.1(b)(1) shall be filed with the court and served upon the opposing party not less than **TWENTY-EIGHT CALENDAR DAYS** prior to the return date of the motion. Opposing papers shall be filed with the court and served upon the opposing party not less than **FOURTEEN CALENDAR DAYS** prior to the return date of the motion. Reply papers may be filed only with leave of court, upon a showing of necessity. If leave is granted, reply papers shall be filed with the court and served upon the opposing party not less than **SEVEN CALENDAR DAYS** prior to the return date of the motion.

All original motion papers shall be filed in the clerk's office designated on the case assignment form provided to the parties at the commencement of the litigation. See Appendix A, Attachment #1, Page B-1.

The parties shall not file, or otherwise provide to the assigned judge, a courtesy copy of the motion papers unless specifically requested to do so by that judge.

- 3. Failure To Timely File or Comply.

Any papers required under this Rule that are not timely filed or are otherwise not in compliance with this Rule shall, unless for good cause shown, not be considered. Failure to file or serve any papers as required by this Rule shall, unless for good cause shown, be deemed by the court as consent to the granting or denial of the motion, as the case may be.

Any party who does not intend to oppose a motion, or a movant who does not intend to pursue a motion, shall promptly notify the court and the opposing attorney of such intention. Notice should be provided at the earliest practicable date, but in any event no less than **SEVEN CALENDAR DAYS** prior to the scheduled return date of the motion, unless for good cause shown.

- (c) **Papers Required.**

Except as otherwise provided in this paragraph, a moving party shall file and serve with the motion papers a supporting affidavit and a memorandum of law. An opposing party shall file and serve with the papers in opposition to the motion an answering affidavit and a memorandum of law. The parties shall also file proof of service of the motion papers on their respective opponents. See L.R. 5.1(a). No party shall file or serve a memorandum of law that exceeds twenty-five (25) pages in length, unless leave of court is obtained prior to filing. All memoranda of law shall contain a table of contents and, wherever possible, parallel citations. Memoranda of law that contain citations to decisions exclusively reported on computerized (i.e.: Westlaw, Lexis, Juris, etc.) and computerized research service shall be accompanied by copies of the decisions.

1. An affidavit shall not contain legal arguments, but shall contain factual and procedural background as appropriate for the motion being made. An affidavit is not required, unless otherwise directed by the assigned judge, with respect to the following:
 - (A) a motion pursuant to Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted;
 - (B) a motion pursuant to Fed. R. Civ. P. 12(c) for judgment on the pleadings; and
 - (C) a motion pursuant to Fed. R. Civ. P. 12(f) to strike a portion of a pleading.
2. A memorandum of law is not required, unless otherwise directed by the assigned judge, with respect to the following:
 - (A) a motion pursuant to Fed. R. Civ. P. 15 to amend or supplement a pleading; [See L.R. 15.1]
 - (B) a motion pursuant to Fed. R. Civ. P. 12(e) for a more definite statement;
 - (C) a motion pursuant to Fed. R. Civ. P. 17 to appoint next friend or guardian ad litem;
 - (D) a motion pursuant to Fed. R. Civ. P. 25 for substitution of parties; and
 - (E) a motion pursuant to Fed. R. Civ. P. 37 to compel discovery.
3. When making a motion based upon a rule or statute, the moving papers shall specify the rule or statute upon which the motion is predicated.

(d) Cross-Motions.

A party opposing a motion may also file and serve a cross-motion with its opposition papers. A cross-motion shall be noticed for argument on the same date as the original motion. The original moving party shall file and serve on the opposing party a response to the cross-motion not less than **SEVEN CALENDAR DAYS** prior to the scheduled return date.

If a party opposing a motion made pursuant to Local Rule 7.1(b)(1) wishes to file a cross-motion, that party shall prepare its notice of cross-motion, brief, affidavits, and other supporting documentation as set forth above. The Notice of Cross-Motion shall not contain a return date. However, **no dispositive cross-motion shall be prepared by a party in response to a non-dispositive motion that has already been filed with the court pursuant to Local Rule 7.1(b)(2).**

In response to a motion for a preliminary injunction, a party may make a cross motion pursuant to this Rule only upon application to and specifically granted by the Court.

(e) Discovery Motions.

1. Parties have an obligation to make good faith efforts among themselves to resolve or reduce all differences relating to discovery prior to seeking court intervention.
2. No motion pursuant to Rules 26 through 37 of the Federal Rules of Civil Procedure shall be filed unless the party making the motion first has conferred in detail with the opposing party concerning the discovery issues between them in a good faith effort to eliminate or reduce the area of controversy and to arrive at a mutually satisfactory resolution.
3. If the parties' conference does not fully resolve the discovery issues, the party seeking relief shall then request a court conference with the assigned magistrate judge. The party making the request for a court conference, unless otherwise directed by the assigned magistrate judge, shall file an affidavit setting forth the date(s) and mode(s) of the consultation(s) with the opposing attorney and a letter that concisely sets forth the nature of the case and a specific listing of each of the items of discovery sought or opposed. Immediately following each disputed item, the party shall set forth the reason why the item should be allowed or disallowed.
4. Following receipt of the request for a discovery conference with the magistrate judge, the clerk shall advise all attorneys of a date and time for the discovery conference. The discovery conference shall be conducted by telephone conference call, initiated by the party making the request for the

conference, unless the parties request a personal appearance and/or the court directs the parties to appear in person.

5. Following the discovery conference, the prevailing party shall submit a proposed order to the magistrate judge, on notice to the opposing party.
6. If a party fails or refuses to comply with Local Rule 7.1(e)(2), thus requiring the request for a discovery conference, the resisting party shall, at the discretion of the court be subject to the sanction of the imposition of costs, including the attorney's fees of opposing counsel in accordance with Fed. R. Civ. P. 37.
7. Whenever a claim of privilege is made with respect to a communication or other item, it shall be specifically identified and the grounds for the privilege stated. No generalized claims of privilege shall be made.
8. Motions to compel discovery shall be filed no later than **THIRTY CALENDAR DAYS** after the discovery cut-off date. See L.R. 16.2.

(f) Summary Judgment Motions.

On all motions for summary judgment pursuant to Fed. R. Civ. P. 56, there shall be annexed to the notice of motion a separate, short and concise statement of the material facts as to which the moving party contends there is no genuine issue, with specific citations to the record where such facts are set forth. The papers opposing a motion for summary judgment shall include a separate, short and concise statement of the material facts as to which it is contended that there exists a genuine issue, with specific citations to the record where the factual issues arise. All material facts set forth in the statement served by the moving party shall be deemed admitted unless controverted by the statement served by the opposing party. The motion for summary judgment shall be denied if the moving party fails to file and serve the statement required by this paragraph.

(g) Motions for Reconsideration.

Motions for reconsideration or reargument, unless otherwise governed by Fed. R. Civ. P. 60, shall be served not later than **TEN CALENDAR DAYS** after the entry of the challenged judgment, order, or decree. The papers supporting and opposing the motion shall be filed pursuant to the time schedule set forth in Local Rule 7.1(b)(2). There shall be served with the notice of motion, a memorandum of law concisely setting forth the matters or controlling decisions which the movant believes the court has overlooked. No oral argument shall be held on motions for reconsideration or reargument unless the court so directs.

(h) Oral Argument.

On all motions made to a district court judge, except motions for reconsideration, the parties shall appear for oral argument on the scheduled return date of the motion. In the discretion of the district court judge, or on consideration of a request of any party, a motion returnable before a district court judge may be disposed of without oral argument. Thus, the parties should be prepared to have their motion papers serve as the sole method of argument on the motion.

On all motions made to a magistrate judge, the parties shall not appear for oral argument on the scheduled return date of the motion unless the court *sua sponte* directs or grants the request of any party for oral argument.

(i) Orders to Show Cause.

1. No application for an order to show cause shall be granted except on a clear and specific showing, by affidavit of good and sufficient cause why a procedure other than Notice of Motion is necessary.
2. Orders to show cause shall fix the time within which all supporting pleadings and papers shall be served on the adverse party and the time for serving and filing by the adverse party of any opposing papers.
3. Unless relieved by order of a judge on a clear and specific showing of good cause, a party applying for an order to show cause shall give reasonable advance notice of the application to the opposing party.

(j) Temporary Restraining Orders.

1. A party seeking to obtain a temporary restraining order shall file a Notice of Motion or order to show cause that fixes the time for a hearing on an application for a preliminary injunction. All such applications must also comply with Fed. R. Civ. P. 65.

2. A party seeking a temporary restraining order shall, unless otherwise directed by the court, serve upon the opposing party all papers filed by the party with the court in conjunction with such application.

(k) Sanctions for Vexatious or Frivolous Motions or Failure to Comply with this Rule.

The presentation to the court of vexatious or frivolous motion papers, or failure to comply with Local Rule 7.1, subjects the offender to discipline as the court shall deem appropriate, including sanctions and the imposition of costs and attorney's fees to opposing counsel.

(l) Adjournments.

Adjournment of motions shall be in the discretion of the court. Any party seeking an adjournment from the court shall first contact the opposing party. No motion under this Rule shall be adjourned more than two times unless the party seeking the adjournment has satisfied the court that a further adjournment is necessary. No adjournment shall be for more than one month unless the party seeking the adjournment has satisfied the court that a longer adjournment is necessary.

(m) (Omitted)

(n) Exemptions from 7.1(b) (Omitted) (Pro se and prisoner cases are exempt).

CHAPTER IX

TRIAL PREPARATION

The Federal and Local Rules of the Northern District of New York cover all phases of trial preparation from the pretrial conference to the conclusion of a case. The following information is not meant to be all inclusive and you should always consult the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Northern District of New York to ascertain what the Court requires of all parties when filing suit, preparing for trial, and trying a lawsuit.

A. FINAL PRETRIAL CONFERENCE AND ORDER.

Prior to the actual trial, a pretrial conference is usually held between a judicial officer and a party (or his/her counsel) to determine (1) what exhibits and witnesses each side might use during the trial; (2) the approximate length of time that will be necessary for the trial and (3) the "ground rules" the Court will utilize before, during and after the trial. After this conference, an order is usually prepared which sets out the above. See Attachment 4 to Appendix A of the Local Rules.

B. THE TRIAL -- THE ROLE OF THE JUDGE AND JURY.

A trial is defined as "a judicial examination of issues between parties to an action." If your case proceeds to trial, the parties will each get the opportunity to present their side of the case, and the judge and jury (if the trial is a jury trial) are responsible for entering a verdict and judgment based on the evidence and arguments presented. It is the judge's duty to see that only proper evidence and arguments are presented. In a jury trial, he/she

also instructs the jury, which will be called upon at the conclusion of a jury trial to make decisions regarding factual matters in dispute. A judgment will then be entered based on the verdict reached by the jury. L.R. 58.1.

If the parties have not requested a trial by jury, L.R. 38.1, the judge becomes the trier of both the law and fact. The judge then enters a “Findings of Fact” and “Conclusions of Law,” sometimes in writing, based on the evidence and arguments presented. A judgment is then entered based on those findings of fact and conclusions of law.

C. SELECTION OF THE JURY.

A jury trial begins with the judge choosing prospective jurors to be called for voir dire (examination). See L.R. 47.1 and General Order No. 24. The Court will determine the number of jurors, which is currently at least six (6) and no more than twelve (12). L.R. 48.1.

Peremptory challenges: Each party will be given a number of peremptory challenges established by law which enables the parties to reject (in most cases) prospective jurors without cause. This decision is based on subjective considerations of the parties when they feel a prospective juror would be detrimental to their side of the case.

Challenge for Cause: The plaintiff or defendant may also challenge a prospective juror "for cause" when the prospective juror lacks a qualification required by law, is not

impartial, is related to either of the parties or will not accept the law as given to him/her by the Court.

D. OPENING STATEMENTS.

After the jury is sworn in or "empaneled," each side may present an opening statement. The plaintiff has the burden of proving that he/she was wronged and suffered damages from such wrong and that the defendant caused such damages. The plaintiff is allowed to present the opening statement first. This may be followed by a statement by the defendant. The Court will determine the time to be allotted for opening and closing arguments. See L.R. 39.1.

E. TESTIMONY OF WITNESSES.

After opening statements are given, testimony of witnesses and documents are presented to the jury or the Court. The plaintiff presents his/her case first. After the initial examination of a witness (also known as "direct examination"), cross-examination is conducted by the other side. After a party has cross-examined a witness, the opposing side has the opportunity to "redirect" examination in order to re-question the witness on the points covered by the cross-examination.

If a witness testifies as to one fact, and a statement or document in the files contradicts such testimony, the document can then be used to question the witness on the accuracy of the witness' statements. If the evidence produced shows that the testimony of the witness is false, the witness is considered "impeached" by the cross-examination.

F. MOTIONS DURING THE COURSE OF THE TRIAL.

Before the closing arguments and up until the time the case is sent to the jury for deliberation, the following motions may be made.

(1) Motion in Limine: This motion is typically made prior to the jury selection. It requests that the judge not allow certain facts to be admitted into evidence, for example, insurance policies, subsequent marriages, criminal records or other matters which are either not relevant to the particular case or which might unfairly influence the jury. Either party may file a motion in limine.

(2) Motion for Judgment as a Matter of Law: This motion is usually made by the defendant at the close of evidence presented by the plaintiff. It is based on the premise that the plaintiff has failed to prove his/her case. If this motion is granted, the trial is concluded in the movant's favor. If the Court denies the motion, the trial continues with presentation of the defendant's side.

(3) Motion for Mistrial: Either party can move for a mistrial if, for example, during the course of the trial certain matters which are not admissible (such as those granted in an order on a motion in limine) are presented by any witness either purposely or unintentionally in the presence of the jury. If the judge grants the motion for mistrial, the trial is immediately ended and the jury is dismissed.

(4) Objections: During the examination of a witness, one side may "object" to the questioning or testimony of a witness, or presentation of evidence, if the litigant believes that the testimony or evidence about to be given should be excluded. If the objection is *sustained* by the judge, that particular testimony or evidence is excluded. If the objection is *overruled* by the judge, the testimony or evidence may be given despite the objection.

G. REBUTTAL TESTIMONY.

After each side has presented its evidence, the plaintiff may be allowed by the judge to present some rebuttal testimony.

H. CLOSING ARGUMENTS.

Closing arguments to the jury set out the facts that each side has presented and the reasons why the party believes the jury should find in favor of one side instead of the other. Time limits are sometimes set by the Court for closing arguments, and each side must adhere to the specified time. See L.R. 39.1.

I. CHARGE TO THE JURY.

After each side presents testimony and evidence, the judge delivers the "charge" to the jury, usually in the form of written instructions. Each side may present proposed written instructions to the judge for consideration. After the judge has considered all proposed instructions, the jury is given appropriate instructions which set forth the jury's responsibility to decide the facts in light of the applicable rules of law. The jury then

returns a verdict in favor of either the plaintiff or the defendant and assesses damages to be awarded, if any.

J. MISTRIAL.

If a jury is unable to reach a verdict and the judge declares a mistrial, the case must be tried again before a new jury. A jury which cannot reach a verdict is usually referred to as a "hung jury."

K. PREPARATION OF JUDGMENT.

Following the entry of the jury's verdict, judgment in favor of the prevailing party is entered forthwith by the Clerk. These post-trial motions usually set out why a party believes the jury's verdict should be disregarded.

L. COSTS.

If costs are awarded to the prevailing party, it is necessary to prepare a bill of costs incurred in the suit for the approval of the Court. See L.R. 54.1. Within thirty (30) days after entry of a judgment, the prevailing party may serve and file a "cost bill" requesting "taxation" of costs itemized thereon.

Unless otherwise provided for by statute, claims for attorney's fees must be made by motion filed no later than fourteen (14) days after entry of judgment. See Fed.R.Civ.P. 54(d)(2).

M. SATISFACTION OF JUDGMENT.

Satisfaction of a money judgment will be entered by the Clerk's office upon the specific conditions set forth in L.R. 58.2.

N. POST-TRIAL MOTIONS; APPEALS.

If you are unhappy with the ultimate disposition of your action, you may choose to file post-trial motions relating to your case. Additionally, you may choose to appeal the outcome of your lawsuit to the Second Circuit. You should consult the Federal Rules of Civil and/or Appellate Procedure regarding the deadlines which exist as to the above.

GLOSSARY -- COMMON LEGAL TERMS

NOTE: The following definitions are not legal definitions. Rather, these definitions are intended to give you a general idea of the meanings of these words. "Black's Law Dictionary" is a dictionary that provides comprehensive definitions of legal terms. This dictionary is available at most law libraries.

A

Abstract of title	A chronological summary of all official records and recorded documents affecting the title to a parcel of real property.
Acceptance	The taking and receiving of anything with the intention of retaining it.
Accomplice	1. A partner in a crime. 2. A person who knowingly and voluntarily participates with another in a criminal activity.
Acknowledgment	1. A formal declaration before an authorized official by the person who executed an instrument that it is his/her free act and deed. 2. The certificate of the official on such instrument attesting that such execution was so acknowledged.
Acquittal	A release, absolution or discharge of an obligation or liability. In criminal law, the finding of not guilty.
Action	Case, cause, suit or controversy disputed or contested before a court.
Additur	An increase by a judge in the amount of damages awarded by a jury.
Adjudication	1. Giving or pronouncing a judgment or decree. 2. The judgment given.
Administrative agencies	Agencies created by the legislative branch of government to administer laws pertaining to specific areas such as social security, taxes, transportation and labor.

Administrator	1. One who administers the estate of a person who dies without a will. 2. A court official.
Admiralty law	Also, maritime law. That body of law relating to ships, shipping, marine commerce and navigation; the transportation of persons or property by sea, etc.
Admissible evidence	Evidence that can be legally and properly introduced in a civil or criminal trial.
Admonish	To advise or caution. For example, the court may admonish counsel for improper actions.
Advance sheets	Paperback pamphlets published by legal publishers periodically which contain cases. When there are a sufficient number of cases, advance sheets are replaced by a bound volume.
Adversary proceeding	A proceeding having opposing parties, such as a plaintiff and a defendant.
Adverse possession	Method of acquiring real property under certain conditions by possession of same for a statutory period.
Affiant	The person who makes and subscribes to an affidavit.
Affidavit	A voluntary, written, declaration of facts, confirmed by oath of the party making it before a person with authority to administer the oath.
Affirmation	A solemn and formal declaration that an affidavit is true. This may be substituted for an oath in certain cases.
Affirmative defense	A defense raised in a responsive pleading, for example, an answer, concerning a matter raised in a pleading; affirmative defenses include contributory negligence or estoppel in civil actions and in criminal cases insanity, duress or self-defense.

Affirmed	In the practice of appellate courts, the word means that the decision of the trial court is found to be correct on appeal.
Agreement	Mutual consent.
Aid and Abet	To actively, knowingly or intentionally assist another person in the commission or attempted commission of a crime.
Alien	A foreign-born person who has not qualified as a citizen of the country.
Allegation	A statement of the issues in a written document (a pleading) which a person is prepared to prove in court.
Alteration	Changing or making different.
Alternative dispute resolution	A process by which parties can settle a dispute without a full, formal trial. Methods include mediation, conciliation, arbitration and settlement, among others.
American Bar Association	A national association of lawyers whose primary purpose is improvement of lawyers and the administration of justice.
American Law Reports	A publication which reports cases from all United States jurisdictions by subject matter.
Ancillary	A proceeding which is auxiliary or subordinate to another proceeding.
Annotations	Remarks, notes, case summaries or commentaries following a statute which describe interpretations of a statute or a case.
Answer	A formal, written statement by the defendant in a lawsuit which answers each allegation contained in the complaint.

Answers to Interrogatories	A formal, written statement by a party to a lawsuit which answers each question or interrogatory propounded (asked) by the other party. These answers must be acknowledged before a notary public or other person authorized to take acknowledgments.
Antitrust acts	Federal and state statutes to protect trade and commerce from unlawful restraints, price discriminations, price fixing and monopolies.
Appeal	A request to a higher court to review a lower court decision.
Appeal Bond	A guaranty by the appealing party which insures that certain court costs will be paid.
Appearance	The act of formally coming into court as a party to a suit either in person or through an attorney.
Appendix	Supplementary materials added to the end of a document.
Appellate court	A court having jurisdiction to hear appeals and review a lower court's decisions.
Appellee	The party against whom an appeal is taken.
Arbitration	The hearing of a dispute by an impartial third person or persons whose award the parties agree to accept.
Arbitrator	A private, disinterested person chosen by the parties in arbitration to hear evidence concerning the dispute and to make an award based on the evidence.
Arraignment	The hearing at which the accused is brought before the court to enter a plea to the criminal charge in the indictment. A party may plead "guilty," "not guilty," or where permitted, "nolo contendere." <u>See</u> preliminary hearing.
Arrest	To take into custody by legal authority.
Assault	A threat to inflict injury on someone with an apparent ability to do so. Also, any intentional display of force that would give the victim reason to fear or expect immediate bodily harm.

Assignment	The transfer to another person of an interest in any property, real or personal.
Assumption of risk	A doctrine under which a person may not recover for an injury received when a person has voluntarily exposed himself/herself to a known danger.
Attachment	Taking a person's property to satisfy a court-ordered debt.
Attorney-at-law	An advocate, counsel or official agent employed in preparing, managing and trying cases in the courts.
Attorney-in-fact	A person (who is not necessarily a lawyer) authorized by another to act in his or her place, either for some particular purpose, as to do a specific act or for the transaction of business in general, not of legal character. This authority is conferred by an instrument in writing, called a "letter of attorney," or more commonly "power of attorney." You must be an attorney <u>at law</u> in order to represent another party in court.
Attorney of record	The principal attorney in a lawsuit who signs all formal documents relating to the suit. In pro se cases, the party signs such documents.

B

Bail	Money or other security (such as a bail bond) provided to the court to temporarily allow a person's release from jail and assure their appearance in court. "Bail" and "Bond" are often used interchangeably.
Bail bond	An obligation signed by the accused to secure his or her presence at the trial. This obligation means that the accused may lose money by not appearing for the trial. Often referred to simply as "bond."
Bailiff	An officer of the court responsible for keeping order, maintaining appropriate courtroom decorum and custody of the jury.

Bankruptcy	Refers to statutes and judicial proceedings involving persons or businesses that cannot pay their debts and seek the assistance of the court in getting a fresh start. Under the protection of the bankruptcy court, debtors may be released or "discharged" from their debts, perhaps by paying a portion of each debt. Bankruptcy judges preside over these proceedings. The person who owes the debts is called the debtor and the people or companies to whom the debtor owes money are called creditors.
Bankruptcy Judge	The judge who determines whether a debtor is entitled to a discharge in bankruptcy.
Bankruptcy law	The area of federal law dealing with bankrupt persons or businesses.
Bar	1. Historically, the partition separating the general public from the space occupied by the judges, lawyers and other participants in a trial. 2. More commonly, the term means the whole body of lawyers.
Bar examination	A state examination taken by prospective lawyers in order to be admitted and licensed to practice law.
Battery	A beating or wrongful physical violence. The threat to use force is an "assault;" the actual use of force is a battery, which usually includes an assault.
Bench	The seat occupied by the judge. More broadly, the court itself.
Bench trial	Trial without a jury in which a judge decides the facts. (Also known as court trial.)
Bench warrant	An order issued by a judge for the arrest of a person.
Beneficiary	Someone named to receive property or benefits in a will. In a trust, a person who is to receive benefits from the trust.
Bequeath	To give a gift to someone through a will.
Bequests	Gifts made in a will.

Best evidence	Primary evidence; the best evidence available. Evidence short of this is "secondary." For example, an original letter is "best evidence," while a photocopy of a letter is "secondary evidence."
Beyond a reasonable doubt	The burden of proof that the State must establish in a criminal action.
Bond	<u>See</u> bail bond. A written agreement by which a person insures he/she will pay a certain sum of money if he/she does not perform certain duties.
Bound supplement	A supplement to a book or books which updates the material in permanent form. <u>See</u> pocket part.
Booking	The process of photographing, fingerprinting and recording identifying data of a suspect. This process follows the arrest.
Breach	1. The breaking or violating of a law, right or duty, either by an act or omission. 2. The failure to carry out any condition of a contract.
Breach of contract	An unjustified failure to perform under the terms of a contract when performance is due.
Brief	A written argument by counsel or a pro se litigant arguing a case that contains a summary of the facts of the case, pertinent laws and an argument of how the law applies to the fact. Also called a memorandum of law.
Burden of proof	In the law of evidence, the necessity or duty of affirmatively proving a fact or facts in dispute on an issue raised between the parties in a lawsuit. The responsibility of proving a point.
Business bankruptcy	A proceeding under the Bankruptcy Code filed by a business entity.
Bylaws	Rules or laws adopted by an association or corporation that governs its actions.

C

Capital crime	A crime punishable by death.
Calendar	A list of cases scheduled for hearing in court.
Canons of ethics	Standards of ethical conduct for attorneys.
Capacity	Having legal authority or mental ability. Being of sound mind.
Caption	Heading or introductory part of a pleading.
Case law	Law established by previous decisions of appellate or district courts. <u>See</u> stare decisis in Foreign Words Glossary.
Cases	General term for an action, cause, suit or controversy, at law or in equity.
Cause	A lawsuit, litigation or action. Any question, civil or criminal, litigated or contested before a court of justice.
Cause of action	The fact or facts which give a person a right to relief in court.
Caveat	A warning; a note of caution.
Censure	An official reprimand or condemnation of an attorney. <u>See</u> disbarment or suspension.
Certification	1. Declaration that a statement is true. 2. Declaration that an instrument is a true and correct copy of the original.
Certiorari	A writ of review issued by a higher court to a lower court. A means of getting an appellate court to review a lower court's decision. If an appellate court grants a writ of certiorari, it agrees to take the appeal. (Sometimes referred to as "granting cert.")
Challenge	An objection, such as when an attorney objects at a hearing to the seating of a particular person on a civil or criminal jury.

Challenge for cause	A request from a party to a judge that a prospective juror not be allowed to be a member of a jury because of specified causes or reasons. <u>See</u> peremptory challenge.
Chambers	A judge's private office. A hearing in chambers takes place in the judge's office outside of the presence of the jury and the public.
Change of venue	Moving a lawsuit or criminal trial to another place for trial. <u>See</u> venue.
Charge, jury	The judge's instructions to the jury concerning the law that applies to the facts of the case on trial.
Chief Judge	Presiding or administrative judge in a court.
Chattel	An article of personal property.
Child	Offspring of parentage; progeny, "issue."
Chronological	Arranged in the order in which events happened; according to date, from the first event to the last event.
Circumstantial evidence	All evidence except eyewitness testimony. One example is physical evidence, such as fingerprints, from which an inference can be drawn.
Citation	1. The written reference to legal authorities, precedents, reported cases, etc., in briefs or other legal documents. 2. A writ or order issued by a court commanding the person named therein to appear at the time and place named.
Citators	A set of books which provides the subsequent history of reported decisions through a form of abbreviations or words.
Civil	Relating to private rights and remedies sought by civil actions as contrasted with criminal proceedings.
Civil action	An action brought by a party to enforce or protect private rights.

Civil law	Law based on a series of written codes or laws.
Civil procedure	The rules and processes by which a civil case is tried and appealed, including the preparations for trial, the rules of evidence and trial conduct and the procedure for pursuing appeals. In the Northern District, parties must follow both the federal and local rules of civil procedure.
Claim	1. A cause of action in a law suit. 2. A debt owing by a debtor to another person or business.
Class action	A lawsuit brought by one or more persons on behalf of a larger group. Individuals seeking to maintain a class action must file a formal motion requesting certification of the class; a judge may then choose to certify the proposed class pursuant to Fed.R.Civ.P. 25.
Clean air acts	Federal and state environmental statutes enacted to regulate and control air pollution.
Clear and convincing evidence	Standard of proof used in certain lawsuits and in regulatory agency cases. It governs the amount of proof that must be offered in order for the plaintiff to win the case.
Clerk of Court	Administrator or chief clerical officer of the court.
Closing argument	The closing statement, by counsel or a pro se litigant, to the trier of facts after all parties have concluded their presentation of evidence at trial.
Code of Federal Regulations	(CFR) An annual publication which contains the cumulative executive agency regulations.
Code of Professional Responsibility	The rules of conduct that govern the legal profession.
Codicil	An amendment to a will.

Collateral Estoppel	Doctrine which provides that a court ruling concerning a disputed set of facts in one action is binding on those same parties in future proceedings against each other.
Commit	To send a person to prison, asylum or reformatory by a court order.
Common law	Law established by subject matter heard in earlier cases. Also called case law.
Commutation	The reduction of a sentence, as from death to life imprisonment.
Comparative negligence	The rule under which negligence is measured by percentage, (and damages are diminished) in proportion to the amount of negligence attributable to the person seeking recovery.
Complainant	The party who complains or sues; one who applies to the court for legal redress. <u>See</u> plaintiff.
Complaint	1. The legal document that usually begins a civil lawsuit. It states the facts and identifies the action the court is asked to take. 2. Formal written charge that a person has committed a criminal offense.
Conciliation	A form of alternative dispute resolution in which the parties bring their dispute to a neutral third party, who helps lower tensions, improve communications and explore possible solutions. Conciliation is similar to mediation, but it may be less formal.
Concurrent sentences	Sentences for more than one crime that are to be served at the same time, rather than one after the other. (Compare with cumulative or consecutive sentences.)
Condemnation	The legal process by which the government takes private land for public use, paying the owners a fair price. <u>See</u> eminent domain.
Conformed copy	An exact copy of a document that could not be or was not copied. For example, a written signature may be replaced on a conformed copy with a notation that it was signed by the parties.

Consecutive sentences	Successive sentences, one beginning at the expiration of another, imposed against a person convicted of two or more crimes. <u>See</u> cumulative or concurrent sentences.
Consent	Agree to voluntarily accept the wish of another.
Conservatorship	Legal right given to a person to manage the property and financial affairs of a person deemed incapable of doing that for himself or herself. <u>See</u> guardianship.
Consideration	The price bargained for and paid for a promise, goods or real estate.
Constitution	The fundamental law of a nation or state which establishes the character and basic principles of the government.
Constitutional law	Law set forth in the Constitution of the United States and the state constitutions.
Consumer bankruptcy	A proceeding under the Bankruptcy Code filed by an individual (or husband and wife) who is not in business.
Contempt of court	Willful disobedience of a judge's command or of an official court order.
Continuance	Postponement of a legal proceeding to a later date. Also, adjournment.
Contract	An agreement between two or more persons which creates an obligation to do or not to do a particular thing either orally or in writing.
Contributory negligence	The rule of law under which an act or omission of plaintiff is a contributing cause of injury and a possible bar to a complete recovery.
Conveyance	Instrument transferring title of an object from one person or group of persons to another.

Conviction	A judgment of guilt against a criminal defendant.
Corroborating evidence	Supplementary evidence that tends to strengthen or confirm the initial evidence.
Counsel	A legal adviser; a term used to refer to lawyers in a case.
Counterclaim	A claim made by the defendant in a civil lawsuit against the plaintiff.
Court	A body in government to which the administration of justice is delegated.
Court-appointed attorney	Attorney appointed by the court to represent a defendant, usually with respect to criminal charges and without the defendant having to pay for the representation.
Court costs	The expenses of prosecuting or defending a lawsuit, other than attorneys fees. An amount of money may be awarded to the successful party (and may be recoverable from the losing party) as reimbursement for court costs.
Court of original jurisdiction	A court where a matter is initiated and heard in the first instance; a trial court.
Court reporter	A person who transcribes by shorthand or stenographically takes down testimony during court proceedings, a deposition or other trial-related proceedings.
Court rules	Regulations governing practice and procedure in the various courts.
Creditor	A person to whom a debt is owed by another.
Crime	An act in violation of the penal laws of a state or the United States. A positive or negative act in violation of penal law.
Criminal justice system	The network of courts and tribunals which deal with criminal law and its enforcement.

Cross-claim	A pleading which asserts a claim arising out of the same subject matter as the original complaint against a co-party. For example, a co-defendant may file a cross-claim against another co-defendant for contribution for any damages assessed against the cross-claimant.
Cross-examination	The questioning of a witness produced by the other side.
Cumulative sentences	Sentences for two or more crimes to run consecutively, rather than concurrently. <u>See</u> consecutive sentences.
Custody	Detaining of a person by lawful process or authority to assure his or her appearance to any hearing; the jailing or imprisonment of a person convicted of a crime.

D

Damages	Money awarded to a person injured by the wrongful act of another person.
Debtor	One who owes a debt to another; a person filing for relief under the Bankruptcy Code.
Decision	The opinion of the court in concluding a case at law.
Declaratory judgment	A statutory remedy for judicial determination of a controversy where a party is in doubt about his/her legal rights.
Decree	An order of the court. A final decree is one that fully and finally disposes of the litigation. <u>See</u> interlocutory.
Defamation	That which tends to injure a person's reputation. <u>See</u> libel and slander.
Default	Failure of the defendant to appear and answer the summons and complaint.
Default judgment	A judgment entered against a party who fails to appear in court or respond to the charges.

Defendant	The person defending a suit.
Defense of property	Affirmative defense in criminal law or tort law where force was used to protect one's property.
Deficient	Incomplete; defective; not sufficient in quantity or force.
Defunct	A corporation no longer operative; having ceased to exist.
Demurrer	A pleading filed by the defendant which alleges that the complaint as filed is not sufficient to require an answer.
Dependent	One who derives existence and support from another.
Deposition	Testimony of a witness or a party taken under oath outside the courtroom, the transcript of which may become a part of the court's file.
Digests	Legal volumes that contain summaries of cases arranged alphabetically by topic.
Direct evidence	Among other things, proof of facts by witnesses who saw acts done or heard words spoken.
Direct examination	The first questioning of witnesses by the party on whose behalf they are called.
Directed verdict	<u>See</u> judgment as a matter of law.
Disbarment	Form of discipline of a lawyer resulting in the loss (often permanently) of that lawyer's right to practice law. <u>See</u> censure or suspension.
Discharge	The name given to the bankruptcy court's formal discharge of a debtor's debts.
Disclaim	To refuse a gift made in a will.
Discovery	The name given pretrial devices for obtaining facts and information about the case. <u>See</u> Federal Rules of Civil Procedure (FRCP) 26-37)

Dismissal	The termination of a lawsuit either with or without prejudice.
Dissent	To disagree. An appellate court opinion setting forth the minority view and outlining the disagreement of one or more judges with the decision of the majority.
Dissolution	The termination; process of dissolving or winding up something.
Diversity of citizenship	The condition when the party on one side of a lawsuit is a citizen of one state and the other party is a citizen of another state; such cases may be under the jurisdiction of federal courts.
Diversion	The process of removing some minor criminal, traffic or juvenile cases from the full judicial process, on the condition that the accused undergo some sort of rehabilitation or make restitution for damages.
Docket	An abstract or listing of all pleadings or the documents filed in a case; the book containing such entries; "trial docket" is a list or calendar of cases to be tried in a certain term.
Docket control	A system for keeping track of deadlines and court dates for both litigation and non-litigation matters.
Domicile	The place where a person has a permanent home to which he/she intends to return.
Double jeopardy	Putting a person on trial more than once for the same crime. It is forbidden by the Fifth Amendment to the United States Constitution.
Due process of law	The right of all persons to receive the guarantees and safeguards of the law and the judicial process. It includes such constitutional requirements as adequate notice, assistance of counsel and the rights to remain silent, to a speedy and public trial, to an impartial jury and to confront and secure witnesses.

E

Eminent Domain	The power of the government to take private property for public use through condemnation.
En Banc	All the judges of a court sitting together. Appellate courts can consist of a dozen or more judges, but often they hear cases in panels of three judges. If a case is heard or reheard by the full court, it is heard "en banc."
Encyclopedia	A book or series of books arranged alphabetically by topics containing information on specific areas of law.
Enjoining	An order by the court telling a person to stop performing a specific act.
Entity	A legally recognized organization.
Entrapment	The act of inducing a person to commit a crime so that a criminal charge will be brought against him.
Environmental Protection Agency	(EPA) A federal agency created to permit coordinated and effective governmental action to preserve the quality of the environment.
Equal Protection of the Law	The guarantee in the Fourteenth Amendment to the U.S. Constitution that all persons be treated equally by the law.
Equity	Justice administered according to fairness; the spirit of fairness in dealing with other persons.
Escheat	The process by which a deceased person's property goes to the state if no heir can be found.
Escrow	Money or a written instrument such as a deed that, by agreement between two parties, is held by a neutral third party (held in escrow) until all conditions of the agreement are met.
Esquire	In the United States the title commonly appended after the name of an attorney. Abbreviated: Esq.

Estate	A person's property.
Estate tax	Generally, a tax on the privilege of transferring property to others after a person's death. In addition to federal estate taxes, many states have their own estate taxes.
Estoppel	An impediment that prevents a person from asserting or doing something contrary to his own previous assertion or act.
Ethics	Of or relating to moral action and conduct; professionally right; conforming to professional standards.
Evidence	Information presented in testimony or in documents that is used to persuade the fact finder (judge or jury) to decide the case for one side or the other.
Exceptions	Declarations by either side in a civil or criminal case reserving the right to appeal a judge's ruling on a motion. Also, in regulatory cases, objections by either side to points made by the other side or to rulings by the agency or one of its hearing officers.
Exclusionary Rule	The rule preventing illegally obtained evidence from being used in any trial.
Execute	To complete; to sign; to carry out according to its terms.
Executor	A personal representative, named in a will, who administers an estate.
Exempt property	All the property of a debtor which is not attachable under the Bankruptcy Code or the state statute.
Exhibit	A document or other item introduced as evidence during a trial or hearing.
Exonerate	Removal of a charge, responsibility or duty.
Ex parte	On behalf of only one party, without notice to any other party. For example, a request for a search warrant is an ex parte proceeding, since the person subject to the search is not notified of the proceeding and is not present at the hearing.

Ex parte proceeding

Actions taken by or orders made by a court upon the application or petition of one party without notice or hearing to other interested parties.

Extenuating circumstances

Circumstances which render a crime less aggravated, heinous or reprehensible than it would be otherwise.

Expungement

The process by which a record is destroyed or sealed.

Extradition

The surrender of an accused criminal by one state to the jurisdiction of another.

F

Fair market value

The value for which a reasonable seller would sell an item of property and for which a reasonable buyer would buy it.

Family law

Those areas of the law pertaining to families, i.e., marriage, divorce, child custody, juvenile, paternity, etc.

Federal Aviation Administration

(FAA) A federal agency which regulates air commerce to promote aviation safety.

Federal Bureau of Investigation

(FBI) A federal agency which investigates all violations of federal laws.

Federal Communications Commission

(FCC) A federal agency which regulates interstate and foreign communications by wire and radio.

Federal Deposit Insurance Corporation

(FDIC) A federal agency which insures deposits in banking institutions in the event of financial failure.

Federal Mediation and Conciliation Service	A federal agency which provides mediators to assist in labor-management disputes.
Federal Register	A daily publication which contains federal administrative rules and regulations.
Federal Reporters	("F.," "F.2d" or "F.3d") Books which contain decisions of the Circuit Courts throughout the country.
Federal Supplement	("F. Supp.") Books which contain decisions of the District Courts throughout the country.
Federal Unemployment Tax	(FUTA tax) A tax levied on employers based upon employee wages paid.
Felony	A serious criminal offense. Under federal law, any offense punishable by death or imprisonment for a term exceeding one year.
Fiduciary	A person or institution who manages money or property for another and who must exercise a standard of care imposed by law, <u>i.e.</u>, personal representative or executor of an estate, a trustee, etc.
File	To place a paper in the official custody of the clerk of court/court administrator to enter into the files or records of a case.
Filing Fee	The fee required for filing various documents. In civil actions, the filing fee is \$120.00. Applications for a writ of habeas corpus require a filing fee of \$5.00.
Finding	Formal conclusion by a judge or regulatory agency on issues of fact. Also, a conclusion by a jury regarding a fact.
Food and Drug Administration	(FDA) A federal agency which sets safety and quality standards for food, drugs, cosmetics and household substances.

Foreclosure A court proceeding upon default in a mortgage to vest title in the mortgagee.

Forfeiture A cancellation. A legal action whereby a person loses all interest in the property.

Fraud A false representation of a matter of fact which is intended to deceive another.

G

Garnishment A legal proceeding in which a debtor's money, in the possession of another (called the garnishee) is applied to the debts of the debtor, such as when an employer garnishes a debtor's wages.

General Jurisdiction Refers to courts that have no limit on the types of criminal and civil cases over which they may preside.

Good time A reduction in sentenced time in prison as a reward for good behavior. It usually is one third to one half of the maximum sentence.

Government Printing Office (GPO) The federal agency in charge of printing, binding and selling of all government publications.

Grand Jury A jury of inquiry whose duty it is to receive complaints and accusations in criminal matters and, if appropriate, issue a formal indictment.

Grantor The person who sets up a trust. Also referred to as "settlor."

Grievance 1. An injury, injustice or wrong which gives ground for complaint. 2. In labor law, a complaint filed by an employee regarding working conditions to be resolved by procedural machinery provided in the union contract.

Guardian A person appointed by law to assume responsibility for incompetent adults or minor children.

Guardianship Legal right given to a person to be responsible for the food, housing, health care and other necessities of a person deemed incapable of providing these necessities for himself or herself.

H

Habeas corpus The name of a writ having for its object to bring a person before a court.

Harmless error An error committed during a trial that was corrected or was not serious enough to affect the outcome of a trial and therefore was not sufficiently harmful (prejudicial) to be reversed on appeal.

Headnote A brief summary of a legal rule or significant facts in a case, which, along with other headnotes, precedes the printed opinion in reports.

Hearing A formal proceeding (generally less formal than a trial) with issues of law or of fact to be heard. Hearings are used extensively by legislative and administrative agencies.

Hearsay Statements by a witness who did not see or hear the incident in question but heard about it from someone else. Hearsay may not be admissible.

Hostile witness A witness whose testimony is not favorable to the party who calls the person as a witness. A hostile witness may be asked leading questions and may be cross-examined by the party who calls him or her to the stand.

Hung jury A jury whose members cannot agree upon a verdict.

I

Immigrants Persons who come into a foreign country or region to live.

Immigration The entry of foreign persons into a country to live permanently.

Immigration and Naturalization Service	(INS) A federal agency which regulates immigration and naturalization of aliens.
Immunity	A grant that assures someone that he/she will not face prosecution in return for providing evidence against another.
Impeachment	A criminal proceeding against a public official.
Impeachment of a witness	An attack on the credibility (believability) of a witness, through evidence introduced for that purpose.
Implied contract	A contract not created or evidenced by the explicit agreement of the parties but one inferred by law.
In forma pauperis	As a poor person; a pauper.
Inadmissible	That which, under the rules of evidence, cannot be admitted or received as evidence.
Incapacity	Lack of legal ability to act; disability, incompetence; lack of adequate power.
Incarceration	Imprisonment in a jail, prison or penitentiary.
Incompetent	One who lacks ability, legal qualification or fitness to manage his/her own affairs.
Indeterminate sentence	A sentence of imprisonment to a specified minimum and maximum period of time, specifically authorized by statute, subject to termination by a parole board or other authorized agency after the prisoner has served the minimum term.
Indictment	A written accusation by a grand jury charging a person with a felony. <u>See</u> information.
Indigent	Needy or impoverished.

Initial appearance	The defendant comes before a judge within hours of the arrest to determine whether or not there is probable cause for his or her arrest.
Information	Accusatory document, filed by a prosecutor, detailing misdemeanor charges against a party.
Infraction	A violation of law not punishable by imprisonment. Minor traffic offenses generally are considered infractions.
Inheritance tax	A tax on property that an heir or beneficiary under a will receives from a deceased person's estate. The heir or beneficiary pays this tax.
Injunction	An order or remedy issued by the court at the request of the complaining party, which forbids another party to do some act which he/she is threatening or attempting to do. Conversely, it may require a person to perform an act which he/she is obligated to perform but refuses to do.
Insolvent	When the total debt of an entity is greater than all of its property.
Instructions	Judge's explanation to the jury before it begins deliberations of the questions it must answer and the applicable law governing the case. (Also referred to as "charge.")
Intentional tort	Wrong perpetrated by one who intends to break the law.
Interlocutory	Temporary; provisional; interim; not final.
Internal Revenue Service	(IRS) The federal agency which administers the tax laws of the United States.
Interrogatories	A set or series of written questions propounded to a party, witness or other person having information or interest in a case; a discovery device.
Interstate Commerce Commission	(ICC) A federal agency which regulates all transportation in interstate commerce.

Intervention	An action by which a third person who may be affected by a lawsuit is permitted to become a party to the suit.
Involuntary bankruptcy	A proceeding initiated by creditors requesting the bankruptcy court to place a debtor in liquidation.
Issue	1. The disputed point in a disagreement between parties in a lawsuit. 2. To send out officially, as in to issue an order.
J	
Joint and several liability	A legal doctrine that makes each of the parties who are responsible for an injury, liable for all the damages awarded in a lawsuit if the other parties responsible cannot pay.
Joint tenancy	A form of legal co-ownership of property (also known as survivorship). At the death of one co-owner, the surviving co-owner becomes sole owner of the property. Tenancy by the entirety is a special form of joint tenancy between a husband and wife.
Judge	A presiding officer of the court.
Judgment	The official and authentic decision of a court of justice upon the rights and claims of parties to an action submitted to the court for determination. <u>See</u> summary judgment.
Judgment as a matter of law	In a case in which the plaintiff has failed to present on the facts of his case proper evidence for jury consideration, the trial judge may order the entry of a verdict without allowing the jury to consider it.
Judgment debtor	One who owes money as a result of a judgment in favor of a creditor.
Judicial lien	A lien obtained by judgment or other judicial process against a debtor.

Judicial review	The authority of a court to review the official actions of other branches of government. Also, the authority to declare unconstitutional the actions of other branches.
Judiciary	The branch of government invested with judicial power to interpret and apply the law; the court system; the body of judges.
Jurat	Certificate of person and officer before whom a writing is sworn to.
Jurisdiction, Personal	The power or authority of a court to hear and try a case with respect to an individual.
Jurisdiction, Subject Matter	The power or authority of a court to hear and try a case.
Jurisprudence	The study of law and the structure of the legal system.
Jury	A certain number of men and women selected according to law and sworn to try a question of fact or indict a person for public offense.
Jury Administrator	The court officer responsible for choosing the panel of persons to serve as potential jurors for a particular court term.
Justiciable	Issues and claims capable of being properly examined in court.

K

Key number system	A research aid developed by West Publishing Company which classifies digests of cases into various law topics and subtopics which are given paragraph numbers called "Key Numbers." Each key number for a given topic helps the researcher quickly find all references to the legal matter being researched.
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L

Lapsed gift	A gift made in a will to a person who has died prior to the will-maker's death.
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Larceny	Obtaining property by fraud or deceit.
Law	The combination of those rules and principles of conduct promulgated by legislative authority, derived from court decisions and established by local custom.
Law Blank	A printed legal form available for preparing documents.
Law Clerk	A lawyer (or law school student) employed to do legal research.
Lawsuit	An action or proceeding in a civil court; term used for a suit or action between two parties in a court of law.
Leading question	A question that suggests the answer desired of the witness. A party generally may not ask one's own witness leading questions. Leading questions may be asked only of hostile witnesses and on cross-examination.
Legal aid	Professional legal services available to persons or organizations unable to afford such services.
Legal process	A formal paper that is legally valid; something issuing from the court, usually a command such as a writ or mandate.
Legal texts	Books that cover specific areas of the law, usually dealing with a single topic.
Legislation	The act of giving or enacting laws; the power to make laws via legislation in contrast to court-made laws.
Legitimate	That which is legal, lawful, recognized by law or according to law.
Leniency	Recommendation for a sentence less than the maximum allowed.
Liable	Legally responsible.
Libel	Published defamation which tends to injure a person's reputation.
Licensing boards	State agencies created to regulate the issuance of licenses, <u>i.e.</u>, to contractors, cosmetologists, realtors, etc.

Lien	An encumbrance or legal burden upon property.
Limine	<u>See</u> "in limine" in Foreign Words Glossary.
Limited Jurisdiction	Refers to courts that are limited in the types of criminal and civil cases they may hear. For example, federal courts are courts of limited jurisdiction courts.
Litigant	A party to a lawsuit.
Litigation	A lawsuit; a legal action, including all proceedings therein.
Living trust	A trust set up and in effect during the lifetime of the grantor. (Also called inter vivos trust.)
Loose-leaf services	Loose-leaf replacement pages provided by a publisher in areas of the law where changes occur at a rapid rate.

M

Magistrate	<u>See</u> U.S. Magistrate Judge.
Malfeasance	The commission of an unlawful act.
Malicious prosecution	An action instituted with intention of injuring the defendant and without probable cause and which terminates in favor of the person prosecuted.
Malpractice	Any professional misconduct.
Marshal	In federal court, the individual that serves process on behalf of an indigent party to an action.
Martindale-Hubbell Law Directory	A publication consisting of several volumes which contains names, addresses, specialties and rating of United States lawyers; also includes digests of state and foreign statutory law.

Mediation	A form of alternative dispute resolution in which the parties bring their dispute to a neutral third party, who helps them agree on a settlement.
Memorandum of law	A legal brief in support of the position taken by a party in an action.
Merger	The absorption of one thing or right into another.
Minor	A person under the age of legal competence.
Minute book	A book maintained in state court that contains minute entries of all hearings and trial conducted by the judge.
Minutes	Memorandum of a transaction or proceeding.
Miranda warning	Requirement that police tell a suspect in their custody of his or her constitutional rights before they question him or her. So named as a result of the <u>Miranda v. Arizona</u> ruling by the United States Supreme Court.
Misdemeanor	A criminal offense lesser than a felony and generally punishable by fine or by imprisonment of less than 1 year.
Misfeasance	Improper performance of an act which a person might lawfully do.
Mistrial	An invalid trial, caused by fundamental error. When a mistrial is declared, the trial must start again from the selection of the jury.
Mitigating circumstances	Those which do not constitute a justification or excuse for an offense but which may be considered as reasons for reducing the degree of blame.
Mitigation	A reduction, abatement or diminution imposed by law.
Moot	A moot case or a moot point is one not subject to a judicial determination because it involves an abstract question or a controversy that has not yet actually arisen or has already passed. Mootness usually refers to a court's refusal to consider a case because the issue involved has been resolved prior to the court's decision, leaving nothing that would be affected by the court's decision.

Motion	An application made to a court or judge by a party which requests a ruling or order in favor of the applicant or "movant."
Motion in Limine	A motion made prior to trial by counsel or the pro se litigant requesting that information which might be prejudicial not be allowed in a case.
Mutual assent	A meeting of the minds; agreement.

N

National Labor Relations Board	(NLRB) A federal agency which remedies unfair labor practices by employers and labor organizations.
Naturalization	Process by which a person acquires nationality after birth and becomes entitled to privileges of citizenship in a country other than that in which such person was born.
Negligence	Failure to use care which a reasonable and prudent person would use under similar circumstances.
No Bill	This phrase, endorsed by a grand jury on the written indictment submitted to it for its approval, means that the evidence was found insufficient to indict.
No-contest Clause	Language in a will that provides that a person who makes a legal challenge to the will's validity will be disinherited.
No-fault Proceedings	A civil case in which parties may resolve their dispute without a formal finding of error or fault.
Noise Control Act	A act which gives government agencies the right to promulgate standards and regulations relating to abatement of noise emissions, <u>i.e.</u>, requirement that automobiles and like vehicles must have mufflers.
Nonfeasance	Nonperformance of an act which should be performed; omission to perform a required duty or total neglect of duty.
Non-jury trial	Trial before the court but without a jury. In a non-jury trial, the court is the finder of both the law and the facts.

Notary Public	A public officer whose function it is to administer oaths, to attest and certify documents and to take acknowledgments.
Notice	A form of notification given by a court or a party to a legal proceeding.
Notice to creditors	A notice given by the bankruptcy court to all creditors of a meeting of creditors.
Nuncupative will	An oral (unwritten) will.

O

Oath	A solemn pledge in attestation of the truth of a statement or in verification of a statement made.
Objection	The process by which one party takes exception to some statement or procedure. An objection is either sustained (allowed) or overruled by the judge.
Occupational Safety and Health Act	(OSHA) A federal law designed to develop and promote occupational safety and health standards.
Official reports	The publication of cumulated court decisions of state or federal courts in advance sheets and bound volumes as provided by statutory authority.
On a person's own recognizance	Release of a person from custody without the payment of any bail or posting of bond, upon the promise of the party to return to court.
Opening statement	The initial statement made by attorneys or pro se litigant for each side, outlining the facts each intends to establish during the trial.

Opinion	A judge's written explanation of a decision of the court or of a majority of judges. A dissenting opinion disagrees with the majority opinion because of the reasoning and/or the principles of law on which the decision is based. A concurring opinion agrees with the decision of the court but offers further comment. (A per curiam opinion is an unsigned opinion "of the court.")
Oral argument	Presentation of an aspect of a case before a court by spoken argument; for example, at a motion calendar.
Order	1. Direction of a court or judge made in writing. 2. A mandate, command, or direction authoritatively given.
Ordinance	A rule established by authority; may be a municipal statute of a city council, regulating such matters as zoning, building, safety, matters of municipality, etc.
Overrule	A judge's decision not to allow an objection. Also, a decision by a higher court finding that a lower court decision was in error.

P

Paper bound supplement	A temporary supplement to a book or books.
Paralegal	1. A person with legal skills who works under the supervision of a lawyer. 2. A legal assistant.
Pardon	An act of grace from governing power which mitigates punishment and restores rights and privileges forfeited on account of the offense.
Parol evidence	Oral or verbal evidence; evidence given by word of mouth in court.
Parole	Supervised release of a prisoner from imprisonment on certain prescribed conditions which entitle him to relief from a prison sentence.
Party	A person, business, or government agency actively involved in the prosecution or defense of a legal proceeding.

Patent	A grant to an inventor of the right to exclude others, for a limited time, from making, using, or selling his invention in the United States.
Patent and Trademark Office	(PTO) The federal agency which examines and issues patents and registers trademarks.
Peremptory challenge	Request by a party that a judge not allow a certain prospective juror as a member of the jury. No reason or cause need be stated. <u>See</u> challenge for cause.
Periodical	A publication which appears regularly but less often than daily.
Perjury	The criminal offense of making a false statement under oath.
Permanent injunction	A court order requiring that some action be taken, or that some party refrain from taking action on a permanent basis. It differs from forms of temporary relief, such as a temporary restraining order or preliminary injunction.
Per se doctrine	Under this doctrine, an activity such as price fixing can be declared as a violation of the antitrust laws without necessity of a court inquiring into the reasonableness of the activity.
Personal property	Anything a person owns other than real estate.
Personal recognizance	In criminal proceedings, the pretrial release of a defendant without bail upon his or her promise to return to court. <u>See</u> recognizance.
Personal representative	The person who administers an estate. If named in a will, that person's title is an executor. If there is no valid will, that person's title is an administrator.

Person in need of supervision	(PINS) Juvenile found to have committed a "status offense" rather than a crime that would provide a basis for a finding of delinquency.
Petitioner	The person filing a certain type of action in a court of original jurisdiction. Also, the person who appeals the judgment of a lower court. <u>See</u> respondent.
Plaintiff	A person who brings an action; the party who complains or sues in a civil action. <u>See</u> complainant.
Plea	The first pleading by a criminal defendant, the defendant's declaration in open court that he or she is guilty or not guilty. The defendant's answer to the charges made in the indictment or information.
Plea bargaining	Process where the accused and the prosecutor in a criminal case work out a satisfactory disposition of the case, usually by the accused agreeing to plead guilty to a lesser offense. Such bargains are not binding on the court. Also referred to as plea negotiating.
Pleadings	The written statements of fact and law filed by the parties to a lawsuit.
Pocket part	Supplements to law books in pamphlet form which are inserted in a pocket inside the back cover of the books to keep them current.
Polling the jury	The act, after a jury verdict has been announced, of asking jurors individually whether they agree with the verdict.
Post-trial	Refers to items happening after the trial, <u>i.e.</u> , post-trial motions.
Pour-Over will	A will that leaves some or all estate assets to a trust established before the will-maker's death.
Power	Authority to do. One has the power to do something if he is of legal age. Also, used as "powers," the term refers to authority granted by one person to another, <u>i.e.</u> , powers given an executor in a will or an agent in a power of attorney.

Power of attorney	A formal instrument authorizing another to act as one's agent or attorney.
Precedent	Laws established by previous cases which must be followed in actions involving identical circumstances. <u>See</u> stare decisis in Foreign Words Glossary.
Preliminary injunction	Court order requiring action or forbidding action until a decision can be made whether to issue a permanent injunction. It differs from a temporary restraining order.
Preliminary hearing	Also, preliminary examination. A hearing by a judge to determine whether a person charged with a crime should be held for trial. <u>See</u> arraignment.
Preponderance of the evidence	Greater weight of the evidence, the common standard of proof in civil cases.
Presentence report	A report to the sentencing judge containing background information about the crime and the defendant to assist the judge in making his or her sentencing decision.
Presentment	Declaration or document issued by a grand jury that either makes a neutral report or notes misdeeds by officials charged with specified public duties. It ordinarily does not include a formal charge of crime. A presentment differs from an indictment.
Pretermitted child	A child born after a will is executed, who is not provided for by the will. Most states have laws that provide for a share of estate property to go to such children.
Pretrial conference	Conference among the opposing attorneys (or pro se parties) and the judge called at the discretion of the court to narrow the issues to be tried and to make efforts to settle the case without a trial.

Prima facie case	A case that is sufficient and has the minimum amount of evidence necessary to allow it to continue in the judicial process. <u>See</u> prima facie in the Foreign Words Glossary.
Primary authority	Constitutions, codes, statutes, ordinances, and case law sources.
Privilege	A benefit or advantage to certain persons beyond the advantages of other persons, <u>i.e.</u> , an exemption, immunity, power, etc.
Pro se	For oneself; on one's own behalf.
Probable cause	1. The basis for all lawful searches, seizures and arrests. 2. A reasonable belief that a crime has or is being committed.
Probate	Court proceeding by which a will is proved valid or invalid. Term used to mean all proceedings pertaining to the administration of estates such as the process by which assets are gathered; applied to pay debts, taxes, and expenses of administration; and distributed to those designated as beneficiaries in the will. Conducted in courts.
Probate court	The court with authority to supervise estate administration.
Probate estate	Estate property that may be disposed of by a will. <u>See</u> estate.
Probation	An alternative to imprisonment allowing a person found guilty of an offense to stay in the community, usually under conditions and under the supervision of a probation officer. A violation of probation can lead to its revocation and to imprisonment.
Product liability	Legal responsibility of manufacturers and sellers to buyers, users, and bystanders for damages or injuries suffered because of defects in goods.
Promisee	An individual to whom a promise is made.
Promisor	An individual who makes a promise.

Promissory estoppel	A promise which estops or legally prevents the promisee from asserting or taking certain action.
Property tax	A tax levied on land and buildings (real estate) and on personal property.
Proprietor	Owner; person who has legal right or title to anything.
Prosecutor	A lawyer representing the government in a criminal case and the interests of the state in civil matters. In criminal cases, the prosecutor has the responsibility of deciding who and when to prosecute.
Proximate cause	The last negligent act which contributes to an injury. A person generally is liable only if an injury was proximately caused by his or her action or by his or her failure to act when he or she had a duty to act.
Proxy	The instrument authorizing one person to represent, act, and vote for another at a shareholders' meeting of a corporation.
Public law	That law such as traffic ordinances or zoning ordinances which applies to the public.
Public defender	Government lawyer who provides free legal defense services to a poor person accused of a crime.
Public Service Commission	Also, Public Utilities Commission. A state agency which regulates utilities.
Punitive damages	Money award given to punish the defendant or wrongdoer.
Purchase agreement/ purchase offer	Also, sales agreement. Agreement between buyer and seller of property which sets forth the price and terms of a proposed sale.
Putative	Alleged; supposed; reputed.

Q

Quash	To vacate or void a summons, subpoena, etc.
Quasi-contract	An obligation created by the law in the absence of an agreement or contract; not based upon the intentions or expressions of the parties.
Quasi-criminal action	A classification of actions such as violation of a city ordinance that is not also violation of a criminal statute, which are wrongs against the public punishable through fines but are not usually indictable offenses.
Quiet title action	A court proceeding to remove a cloud on the title to real property.
Quitclaim deed	A deed without warranty of title which passes whatever title the grantor has to another.

R

Real property	Land, buildings, and whatever is attached or affixed to the land. Generally synonymous with the words "real estate."
Reasonable doubt	A person accused of a crime is entitled to acquittal if, in the minds of the jury, his or her guilt has not been proved beyond a "reasonable doubt;" i.e., when jurors cannot say they feel an abiding conviction as to the truth of the charge.
Reasonable person	A phrase used to denote a hypothetical person who exercises qualities of attention, knowledge, intelligence, and judgment that society requires of its members for the protection of their own interest and the interests of others. Thus, the test of negligence is based on either a failure to do something that a reasonable person, guided by considerations that ordinarily regulate conduct, would do, or on the doing of something that a reasonable and prudent (wise) person would not do.
Rebut	Evidence disproving other evidence previously given or reestablishing the credibility of challenged evidence. <u>See</u> rejoinder.

Recognizance	An obligation entered into before a court whereby the recognizer acknowledges that he will do a specific act required by law.
Record	All the documents and evidence plus transcripts of oral proceedings in a case.
Recuse	The process by which a judge is disqualified from hearing a case, on his or her own motion or upon the objection of either party.
Re-direct examination	Opportunity to present rebuttal evidence after one's witness has been subjected to cross-examination.
Redress	To set right; to remedy; to compensate; to remove the causes of a grievance.
Referee	A person to whom the court refers a pending case to take testimony, hear the parties, and report back to the court. A referee is an officer with judicial powers who serves as an arm of the court.
Rehearing	Another hearing of a civil or criminal case by the same court in which the case was originally heard.
Registered mark	Trademark with the words "Registered in the U.S. Patent and Trademark Office" or the letter "R" enclosed within a circle.
Rejoinder	Opportunity for the plaintiff/petitioner to offer limited response to evidence presented by the defendant/respondent. <u>See</u> rebut.
Remand	To send a dispute back to the court where it was originally heard. Usually it is an appellate court that remands a case for proceedings in the trial court consistent with the appellate court's ruling.
Remedy	Legal or judicial means by which a right or privilege is enforced or the violation of a right or privilege is prevented, redressed, or compensated.
Remittitur	The reduction by a judge of the damages awarded by a jury.

Removal	The transfer of a state case to federal court.
Replacement volumes	Volumes which replace books and their pocket parts when the pocket parts cause the books to become too bulky.
Replevin	An action for the recovery of a possession that has been wrongfully taken.
Reply	The response by a party to charges raised in a pleading by the other party.
Reporters	Books which contain court decisions.
Request for admission	Also, Request to Admit. Written statements of facts concerning a case which are submitted to an adverse party and which that party must admit or deny; a discovery device.
Request for production of documents	A direction or command served upon another party for production of specified documents for review with respect to a suit; a discovery device.
Request to admit	<u>See</u> Request for Admission.
Rescission	The undoing of a contract; repeal.
Research	A careful hunting for facts, truth and/or the law about a subject.
Respondent	1. The person that must respond to allegations contained in a petition. 2. The person against whom an appeal is taken. <u>See</u> petitioner.
Rest	A party is said to "rest" or "rest its case" when it has presented all the evidence it intends to offer.
Restatement	A publication which tells what the law is in a particular field, as compiled from statutes and decisions.

Restitution	Act of restoring anything to its rightful owner; the act of restoring someone to an economic position he enjoyed before he suffered a loss.
Retainer	Act of the client in employing the attorney or counsel, and also denotes the fee which the client pays when he or she retains the attorney to act for them.
Return	A report to a judge by police on the implementation of an arrest or search warrant. Also, a report to a judge in reply to a subpoena, civil or criminal.
Reverse	An action of a higher court in setting aside or revoking a lower court decision.
Reversible error	A procedural error during a trial or hearing sufficiently harmful to justify reversing the judgment of a lower court.
Revocable trust	A trust that the grantor may change or revoke.
Revoke	To cancel or nullify something.
Right of way	The right of a party to pass over the land of another.
Robinson-Patman Act	An amendment to the Clayton Act which deals with price discrimination.
Robbery	Felonious taking of another's property, from his or her person or immediate presence and against his or her will, by means of force or fear. <u>See</u> larceny.
Rules	Established standards, guides, or regulations set up by authority that must be followed by parties to an action.
Rules of evidence	Standards governing whether evidence in a civil or criminal case is admissible.

S

Search warrant	A written order issued by a judge that directs a law enforcement officer to search a specific area for a particular piece of evidence.
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Seal	To mark a document with a seal; to authenticate or make binding by affixing a seal. Court seal, corporate seal.
Secondary authority	Legal encyclopedias, treatises, legal texts, law review articles, and citators. Writings which set forth the opinion of the writer as to the law.
Secured debts	In bankruptcy, a debt is secured if the debtor gave the creditor a right to repossess the property or goods used as collateral.
Securities and Exchange Commission	(SEC) A federal agency which monitors the securities industry.
Self-defense	The claim that an act otherwise criminal was legally justifiable because it was necessary to protect a person or property from the threat or action of another.
Self-incrimination, privilege against:	The constitutional right of people to refuse to give testimony against themselves that could subject them to criminal prosecution. The right is guaranteed in the Fifth Amendment to the United States Constitution. Asserting the right is often referred to as "taking the Fifth."
Self-proving will	A will whose validity does not have to be testified to in court by the witnesses to it, since the witnesses executed an affidavit reflecting proper execution of the will prior to the maker's death.
Sentence	The punishment ordered by a court for a defendant convicted of a crime. <u>See</u> concurrent and consecutive sentences.
Sentence Report	<u>See</u> Presentence Report.
Sequester	To separate. Sometimes juries are separated from outside influences during their deliberations. For example, this may occur during a highly publicized trial.

Sequestration of witnesses	Keeping all witnesses (except plaintiff and defendant) out of the courtroom except for their time on the stand, and cautioning them not to discuss their testimony with other witnesses. Also referred to as "separation of witnesses."
Service of process	The delivering of writs, summonses, subpoenas or other documents by delivering them to the party named in the document. Also referred to as "service."
Settlement	An agreement between the parties disposing of a lawsuit.
Settlor	The person who sets up a trust. Also referred to as "grantor."
Shepardizing	Method for finding subsequent development of a legal theory by tracing status of a case as legal authority.
Sheriff	The executive officer of local court in some areas. In other jurisdictions the sheriff is the chief law enforcement officer of a county.
Sherman Act	The basic antitrust statute prohibiting any unreasonable interference, conspiracy, restraint of trade, or monopolies with respect to interstate commerce.
Sidebar	A conference between the judge and lawyers or pro se litigant, usually held in the courtroom, but neither the jury nor other people in the courtroom may hear the conversation.
Slander	Spoken defamation which tends to injure a person's reputation. <u>See</u> libel.
Small Business Administration	(SBA) A federal agency which provides assistance of all kinds, including loans, to small businesses.
Small Claims Court	A state court that handles civil claims for small amounts of money. People often represent themselves rather than hire an attorney.

Social Security	A system of federal old-age pensions for employed persons begun in 1935. A portion of the payment is deducted from the employee's salary and an equal portion is contributed by the employer.
Social Security Administration	(SSA) The federal agency which administers the national social security program.
Social Security Tax	A payroll deduction based on gross wages paid; this amount is matched by the employer as required by the Federal Insurance Contribution Act (FICA).
Sovereign Immunity	The doctrine that the government, state or federal, is immune to lawsuit unless it gives consent to the suit through statute.
Specific performance	A remedy requiring a person who has breached a contract to perform specifically what he or she has agreed to do. Specific performance is ordered when damages would be inadequate compensation.
Speedy Trial Act	Federal law establishing time limits for carrying out major events, <u>i.e.</u> indictment, arraignment, etc., in a criminal prosecution.
Spendthrift trust	A trust set up for the benefit of someone whom the grantor believes would be incapable of managing his or her own financial affairs.
Standard of proof	Indicates the degree to which an aspect of a case must be proven. In a civil case, the burden of proof rests with the plaintiff, who must establish his or her case by such standards of proof as a "preponderance of evidence" or "clear and convincing evidence." <u>See</u> burden of proof.
Standing	The legal right to bring a lawsuit. Only a person with something at stake has standing to bring a lawsuit.

Statute	Legislative enactment; it may be a single act of a legislature or a body of acts which are collected and arranged for a session of a legislature. <u>See</u> statutory law.
Statute of frauds	A statutory requirement that certain contracts must be in writing.
Statute of limitations	A statute which limits the right of a plaintiff to file an action unless it is done within a specified time period after the occurrence which gives rise to the right to sue.
Statutory	Relating to a statute; created or defined by a law.
Statutory construction	Process by which a court seeks to interpret the meaning and scope of legislation.
Statutory law	Laws promulgated by Congress and state legislatures. <u>See</u> case law and common law.
Statutory research	Research of legislation enacted by a state or the United States.
Stay	A court order halting an event.
Stipulation	An agreement between the parties involved in a lawsuit regulating one or more aspects relating to that lawsuit.
Strict liability	Concept applied by the courts in product liability cases that when a manufacturer presents his goods for public sale, it is representing that they are suitable for their intended use.
Strike	Pleadings, evidence or other matters in a case that have been improperly presented to the court and will not be allowed to remain as part of the case.
Subpoena	A command to appear at a certain time and place to give testimony upon a certain matter.
Subpoena Duces Tecum	A court order commanding a witness to bring certain documents or records to court.

Substantive law	The statutory or written law that governs rights and obligations of those who are subject to it.
Summary judgment	A pre-trial judgment given on the basis of pleadings, affidavits, and exhibits presented for the record by way of a motion. It is used when there is no genuine issue of material fact and one party is entitled to a judgment as a matter of law. <u>See</u> FRCP 56.
Summons	Instrument used to commence a civil action or special proceeding; the means of acquiring jurisdiction over a party.
Support trust	A trust that instructs the trustee to spend only as much income and principal (the assets held in the trust) as needed for the beneficiary's support.
Suppress	To forbid the use of evidence at a trial because it is improper or was improperly obtained. <u>See</u> exclusionary rule.
Surety Bond	A bond purchased at the expense of the estate to insure the executor's proper performance. Also referred to as "fidelity bond."
Survivorship	<u>See</u> joint tenancy.
Suspension	A temporary loss of the right to practice law by an attorney. <u>See</u> disbarment or censure.
Sustain	A court ruling upholding an objection or a motion.
T	
Taxable income	The income against which tax rates are applied to compute tax paid; gross income of businesses or adjusted gross income of individuals less deductions and exemptions.
Tax Court of the United States	A judicial body which hears cases concerning federal tax laws.
Temporary relief	Any order from the court that protects an interest of a party pending further action by the court.

Temporary restraining order	An emergency remedy of brief duration issued by a court only when immediate or irreparable damages or loss might result before the opposition could take action, and where the moving party can establish irreparable harm if not for the remedy and a likelihood of success on the merits of his/her underlying claim.
Tender of performance	An offer or attempt to do what is required under a contract or under the law.
Testamentary capacity	The legal ability to make a will.
Testamentary trust	A trust set up by a will.
Testator	Person who makes a will (Female: testatrix).
Testimony	The evidence given by a witness under oath. It does not include evidence from documents and other physical evidence.
Third party complaint	A pleading filed by a defendant against a third party (not presently a party to the suit) which alleges that the third party is liable for all or part of the damages plaintiff may obtain from defendant.
Title	Legal ownership of property, usually real property or automobiles.
Tort	A private or civil wrong or injury for which the court provides a remedy through an action for damages.
Trademark	A word, name, symbol, or devise used by a manufacturer to distinguish its goods from those sold by others.
Transcript	A written, word-for-word record of what was said during a proceeding. Usually refers to a record of a trial, hearing, or other proceeding which has been transcribed from a recording or from shorthand.

Treatise	A book or writing containing a narrative statement on a field of law.
Trial	A judicial examination of issues between parties to an action.
Trial brief	A written document prepared for the court and used at trial. It contains the issues to be tried, synopsis of evidence to be presented and case and statutory authority to substantiate the party's position at trial.
Trust	A legal device used to manage real or personal property, established by one person (grantor or settlor) for the benefit of another (beneficiary). <u>See</u> trustee.
Trust agreement or declaration	The legal document that sets up a living trust. Testamentary trusts are set up in a will.
Trustee	The person or institution that manages the property put in trust.
Truth in lending	Statutes which provide that precise and meaningful cost of credit information be provided to the credit customer.

U

Unfair labor practice	Actions by the employer which interfere with, restrain, coerce, or threaten employees with respect to their rights as employees.
Uniform Commercial Code	(UCC) A uniform law governing commercial transactions. The UCC has been adopted by all states except Louisiana.
Uniform Laws Annotated	Annotated uniform and model acts approved by the National Conference of Commissioners on Uniform State Laws.
Unilateral contract	An agreement by which one undertakes an express performance without receiving any express promise of performance from the other.

Union	An organization of workers formed for the purpose of collective bargaining.
United States Attorney	A federal district attorney appointed by the President to prosecute all offenses committed against the United States; to prosecute or defend the government in all civil actions in which it is concerned.
United States Bankruptcy Court	The judicial body which hears matters pertaining to bankruptcy and reorganization.
United States Court of Appeals	Courts which hear appeals from federal district courts, bankruptcy courts, and tax courts.
United States Court of Claims	Court which hears certain actions brought against the U.S. Government.
United States Court of Military Appeals	Court which hears appeals from court marshal decisions.
United States Court of Customs & Patent Appeals	Court which hears appeals from all U.S. customs courts.
United States Court of International Trade	Court which hears cases concerning federal tariff laws.
United States District Courts	Courts which hear both criminal and civil actions and admiralty cases.

United States Magistrate Judge	Judicial officer given authority by 28 U.S.C. § 636. This judicial officer hears all preliminary criminal matters, but does not conduct felony trials. A United States Magistrate Judge also presides over any pretrial civil matters referred by the district judge. If all parties consent, criminal misdemeanor and civil trials can be heard by a United States Magistrate Judge.
United States Marshals Service	Agency which serves civil and criminal process in federal courts for those people who have been found to be a pauper.
United States Postal Service	The federal office which provides mail delivery to individuals and businesses within the United States.
United States Reports	Publication of court decisions of the United States Supreme Court.
United States Supreme Court	The highest court in the land, established by U.S. Constitution.
Unsecured debts	In bankruptcy, debts such as open accounts at department stores for which the debtor has not pledged collateral to guarantee payment.
Urban	A city or town.
Usury	Extraction of interest on a loan above the maximum rate permitted by statute.

V

Vacate	To set aside.
Venire	A writ summoning persons to court to act as jurors. <u>See</u> venire facias in Foreign Words Glossary.
Venue	Authority of a court to hear a matter based on geographical location.

Verdict	A conclusion, as to fact or law, that forms the basis for the judgment of the jury or the court. <u>See</u> Judgment as a Matter of Law.
Veterans' Administration	(VA) The federal agency which administers a system of benefits for veterans and their dependents.
Visa	An official endorsement on a document or passport denoting that the bearer may proceed.
Void	Invalid; a void agreement is one for which there is no remedy.
Voidable	Capable of being declared invalid; a voidable contract is one where a person may avoid an obligation, as a contract between an adult and a minor.
Voir dire	The preliminary examination made in court of a witness or juror to determine his/her competency or interest in a matter. Literally, to speak the truth.
Voluntary bankruptcy	A proceeding by which a debtor voluntarily asks for a discharge of his/her debts under the Bankruptcy Code.

W

Waiver	The giving up of a right.
Waiver of immunity	A means authorized by statute by which a witness, before testifying or producing evidence, may relinquish the right to refuse to testify against himself or herself, thereby making it possible for his or her testimony to be used against him or her in future proceedings.
Warrant	Most commonly, a court order authorizing law enforcement officers to make an arrest or conduct a search. An application seeking a warrant must be accompanied by an affidavit which establishes probable cause by detailing the facts upon which the request is based.

Warranty	A promise that a proposition of fact is true.
Warranty deed	A deed which guarantees that the title conveyed is good and its transfer rightful.
Water rights	The right to use water.
Will	A legal declaration that disposes of a person's property when that person dies.
Withholding	A tax deducted from a salary, wage, or other income on behalf of the government at the time of payment of wages to the person who pays it.
With prejudice	A declaration which dismisses all rights. A judgment barring the right to bring or maintain an action on the same claim or cause.
Without prejudice	A declaration that no rights or privileges of the party concerned are waived or lost. In a dismissal, these words maintain the right to bring a subsequent suit on the same claim.
Witness	One who personally sees or perceives a thing; one who testifies as to what he has seen, heard, or otherwise observed.
Words and Phrases Legally Defined	A set of books in dictionary form which lists judicial determinations of a word or phrase.
Worker's compensation	A state agency which handles claims of workers injured on their jobs.
Writ	A judicial order directing a person to do something.
Writ of certiorari	An order issued by the Supreme Court directing the lower court to transmit records for a case for which it will hear on appeal. <u>See</u> certiorari in Foreign Words Glossary.
Writ of execution	An order of the court evidencing debt of one party to another and commanding the court officer to take property in satisfaction of the debt.

Writ of garnishment

An order of the court whereby property, money, or credits in the possession of another person may be seized and applied to pay a debtor's debt. It is used as an incident to or auxiliary of a judgment rendered in a principal action.

Z

Zoning Commission

Local agencies with jurisdiction to regulate use of properties within their geographic area.

GLOSSARY -- COMMON FOREIGN TERMS

A

Ab initio	From the beginning.
Absence d'esprit	Absence of mind.
A contrario	Argument based on contract.
Ad curiam	Before the court; to the court.
Ad damnum	To the damage.
A datu	From the date.
Addendum	(Pl. addenda) Something added; appendix or supplement.
Ad finem	To the end; at the end.
Ad hoc	For this purpose or occasion.
Ad infinitum	To infinity.
Ad libitum	(Abbr. ad lib) At will.
Ad litem	For purpose of the suit or action.
Admortization	Amortization.
Ad rem	To the thing at hand.
Ad valorem	To the value.
Adversus	Against.
A fortiori	With greater force.
Agenda	Things to be done.
Alias	Called by another name.

Alibi	Elsewhere; in another place.
Alii	Others.
Alter ego	A counterpart.
A maximis ad minima	From the greatest to the least.
Amicus	Friend.
Amicus curiae	Friend of the court.
Animo	With intent.
Animo et facto	An intention and fact.
Anno Domini	(Abbr. A.D.) In the year of our Lord.
Ante	Before.
A fortiori	To draw inference that because a certain conclusion of fact is true, then a second conclusion must also be true.
A priori	From something previously determined.
Apropos	Pertinent to the purpose or time.
Arguendo	By arguing or reasoning; being in argument.

B

Bona fide	In good faith.
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C

Capita	Persons; heads.
Causa	A cause; an action, expectation; reason.
Causa mortis	In expectation of death.

Causa prima	First or original cause.
Causa proxima	Immediate cause.
Caveat	Notice of opposition; caution; warning.
Caveat actor	Let the doer beware.
Caveat emptor	Let the buyer beware.
Certiorari	A writ of review or inquiry; to be made more certain.
Cestui	The one.
Cestui que use	Person who uses.
Charta	A charter, as a deed of land.
Circa	About; concerning; in the area of.
Committitur	Entry which records a defendant's commitment.
Compos mentis	Of a sound mind; sane.
Conditio sine qua non	A necessary condition.
Condicto	A summons; an action.
Contra	Contrary to.
Contra bonos mores	Against good morals.
Contra formam statuti	Against the form of the statute.
Contra pacem	Against the peace.
Coram	Before; in the presence of.
Coram iudice	Before the jurisdiction of the court.

Coram nobis	To bring to the attention of the Court; a writ of coram nobis is used to bring factual errors to the attention of the Court and to get relief from same.
Corpus	The main body or substance of a thing; principal of an estate or a fund.
Corpus delicti	The body or substance of the offense.
Corpus juris	Comprehensive collection of the law.
Corpus juris civilis	The body of the civil law.
Coup de grace	A finishing blow or stroke.
Crimen	A crime.
Cui bono	For whose benefit.
Culpa	Fault or guilt.
Cum	With.
Curia	Court.
Custodia legis	Custody of the law.

D

Damnum absque injuria	Legally noncompensable loss.
Datum	(Pl. data) An item or thing given; a date.
De bene esse	Conditionally or provisionally; for what it is worth.
De facto	In fact; an actuality.
De Jure	By law; valid in law.

De minimis non curat lex	The law does not care about mere trifles.
De novo	Anew.
Dictum	(Pl. dicta) A judicial opinion on a point of law which is not necessary for the court's decision in a particular case.
Duces Tecum	Bring with you.
Durante	Pending or during.
Durante vita	During life.

E

Emeritus	Retired from official active duties.
Eo ipso	By the thing itself.
E pluribus unum	One out of many; one composed of many (the motto of the United States, one government formed of many states).
Erratum	(Pl. errata) Error made in printing.
Esprit de corps	The spirit which animates a collective body, as of the army or the bar.
Esse	To be.
Et	And; also.
Et alii	(Abbr. et al.) And others.
Et sequentia	(Abbr. et seq.) And as follows.
Et uxor	(Abbr. et ux.) And wife.
Et vir	And husband.
Ex adverso	From the opposite view.

Ex cathedra	From the bench; with high authority.
Ex contractu	From a contract.
Ex curia	Out of court.
Ex dono	By gift.
Ex lege	According to the law.
Ex officio	By virtue.
Ex parte	From or of one side or party.
Ex post facto	After the act is done; after the fact.
Ex proprio motu	By his own motion.
Ex relatione	(Abbr. ex rel.) On the information of or on the relation of.

F

Facto	In fact; in or by the law.
Fait	A fact; an act committed; a deed.
Fait Accompli	The deed is done.
Feme, femme	Woman.
Feme covert	A married woman.
Feme sole	A single woman (unmarried).
Finis	The end or conclusion.

G

Gradus	A grade or a degree.
Gravis	Serious; of importance; something grave.

H

Habeas Corpus	You have the body; a writ used to bring someone before the court.
Habendum	Clause in a deed which defines the extent of ownership in the thing granted; begins with the words "To have and to hold."
Hoc	With or this.

I

Ibidem	(Abbr. Ib., ib., Ibid., or ibid.) In the same place, or case, or on the same page.
Idem	(Abbr. Id.) The very same, exactly this.
Id est	(Abbr. i.e.) That is; that is to say.
In actu	In reality.
In ambiguo	Ambiguous; in doubt.
In camera	In chambers, or in private. A hearing in camera takes place outside of the presence of the jury and the public.
In curia	In court.
In esse	In being; to be.
In extenso	In full length; verbatim.
In extremis	At point of death; in extremity.
In facto	In fact or in deed.
Infinito	Perpetually; to infinity.
In forma pauperis	As a poor person; a pauper.
Infra	Beneath; below.

In futuro	In the future.
In hoc	In this regard; in this.
In initio	In the beginning.
In limine	At the beginning; the threshold.
In loco	In the proper place or location.
In loco parentis	In the place of a parent.
In medias res	Into the midst of things.
In pari delicto	Of equal fault or guilt.
In personam	Against a certain person; against the person.
In propria persona	Persons who present their own case without lawyers. <u>See</u> pro se.
In re	In the matter of.
In rem	Against the thing.
In situ	In the original situation.
Inter alia	Among other things.
Inter alios	Among other persons.
Inter vivos	Between living persons.
In toto	The whole; entirely.
Ipsē	He; himself.
Ipso facto	By the act itself; or by the fact itself.
Ipso jure	By the law itself.

J

Judicium	Judgment.
Jus civile	Civil law.
Jus commune	Common law.
Jus divinum	Divine law.

L

Lex	Law.
Lex domicili	Law of the dominion.
Lex loci	The law or custom of a place.
Lex scripta	Law by statute.
Liber	Book; a book of records, as of deeds.
Lis pendens	A pending lawsuit.
Locus	Place or location.
Locus sigilli	(Abbr. L.S.) The place of the seal.

M

Mala	Bad.
Mala fide	With bad faith.
Malo modo	In a bad manner.
Malo animo	With an evil intent.
Mandamus	Writ issued by a superior court to an inferior tribunal to enforce the performance of a public duty.
Memorabilia	Items to be remembered.

Mens rea The "guilty mind" necessary to establish criminal responsibility.

Mortis causa In expectation of death.

N

Nee Word used to show maiden family name of a married woman.

Nil Nothing; of no account.

**Nolle
prosequi** Not willing to proceed.

Nolo contendere I do not wish to contend; a plea entered by a defendant.

Non Not.

Non assumpsit A plea in defense that "he did not undertake and promise."

Non compos mentis Not of sound mind; mentally incompetent.

Non sequitur It does not follow.

Nota Note; take notice.

Nota bene (Abbr. NB) Note well.

Nulla bona Return made upon execution by the sheriff or court officer when he/she has found no leviable goods.

Nunc pro tunc Now for then; acts allowed with retroactive effect.

O

Obiter dictum A thing said by the way, as language unnecessary to a decision or ruling on an issue not raised.

Oblatio Tender of payment.

Onus Probandi The burden of proving.

Opere citato (Abbr. op. cit.) In the work quoted.

P

Parens patriae Power of guardianship over persons under disability. The doctrine under which the court protects the interests of a juvenile.

Pendens Pending.

Pendente lite Pending the litigation; while the suit continues.

Per annum Annually; by the year.

Per capita By the head; for each individual; equally shared.

Per contra On the contrary.

Per curiam By the court; by the court as a whole.

Per diem By the day.

Per se Considered by itself; taken alone.

Persona A person.

Per stirpes By representation; use to designate the manner of rights of descendants where children of a deceased descendant will take the share which their parent would have taken if living.

Per viam By way of.

Pro bono publico For the public good. Lawyers representing clients without a fee are said to be working pro bono publico.

Pro rata Proportionate share; distribution in proportion.

Pro se For oneself; on one's own behalf.

Post After; later.

Post factum After the fact; after the event.

Post hoc	After this.
Praecipe	A writ commanding a person to do some act or to appear and show cause why he should not do so; an order.
Prima facie	On the face of it; at first view.
Pro confesso	As if conceded.
Pro forma	For the sake of form.
Pro nunc	For now.

Q

Quantum	(Pl. quanta) Quantity or amount.
Quantum meruit	As much as one deserves.
Quantum sufficit	A sufficient quantity.
Quasi	As if; having the character of.
Quasi ex contractu	As if by contract; as if from contract.
Quid pro quo	One thing for another; this for that.
Quo warranto	An action whereby one is required to show by what right one is exercising a public office, franchise or liberty; a writ bringing the person into court on such action.

R

Ratio legis	The reason underlying the law.
Res	A thing; the subject matter.
Res adjudicata	Once settled by a judicial decision, the party may not sue again on the same matter.

Res gestae The facts or things done which form the basis for a litigation action.

Res ipsa loquitur The thing speaks for itself.

Res judicata See res adjudicata.

Respondeat superior Let the principal answer for the acts of the agent.

S

Sanae mentis Of a sound mind; sane.

Sans recours Without recourse.

Scilicet (Abbr. scil.) To wit; that is to say (most often seen in pleadings abbreviated as s. or ss.)

Secundum According to.

Secundum legem According to law.

Secundum regulam According to rule.

Semper fidelis Always faithful.

Sequitur (Abbr. seq.) It follows. See et sequentia.

Sine Without.

Sine die Without a day appointed.

Sine qua non An indispensable condition; a requisite.

Stare decisis To abide by decided cases.

**Status quo or
status in quo** The existing state of something.

Sua sponte Of its own volition or motion; spontaneously.

Sub	Under or subordinate to.
Sub conditione	Under a condition; on condition.
Subpoena	Under penalty; a document to cause a witness to appear under penalty if he/she should not do so.
Subpoena duces tecum	A subpoena ordering a person to produce certain documents, records, or other items described therein for evidence (also under penalty for failure to appear).
Sui generis	Of his, her, or its own kind.
Supersedeas	Preventing or annulling; a writ to stay a legal proceeding.
Supra	Before; above.

T

Tempus	Time
Tenere	To hold or to keep.
Toto	Whole or complete (also used in toto).
Totum	The whole.

U

Ubi supra	Where above mentioned.
Ultra	Beyond; outside of; in excess of.
Ultra vires	Beyond power; beyond or exceeding legal power or authority.
Una voce	With one voice; unanimously.

Uxor	Wife.
Uxor et vir	Wife and husband.

V

Vacantia bona	Goods without an owner; unclaimed goods.
Vel	Whether; or.
Vel non	Or not.
Venire facias	Writ used in summoning jurors.
Versus	(Abbr. v. or vs.) Against.
Vice versa	The order is changed; in alternative order.
Vir	Husband.
Vir et uxor	Husband and wife (also sometimes seen et ux).
Viva voce	By oral testimony; a living voice.
Vivos	Living. <u>See</u> inter vivos.
Voir dire	The preliminary examination made in court of a witness or juror to determine his/her competency or interest in a matter. Literally, to speak the truth.